TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939.

No. 667

JOHN CARLSON, APPELLANT,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

APPEAL FROM SUPERIOR COURT OF SHASTA COUNTY, STATE OF CALIFORNIA

FILED JANUARY 25, 1940.

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[fol. a] [Caption omitted]

[fol. 1]

IN JUSTICE'S COURT OF TOWNSHIP NUMBER NINE, COUNTY OF SHASTA, STATE OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

RICHARD GLADSTEIN, JOHN MORGAN, JOHN WALKER, JOHN WIESE, Mike Brovich, James Freeman, Marx Barichvich, E. P. Glad, Harold Allinger, L. A. Powell, E. J. Cherry, Ray Standow, Harold Arrasmith, George Snell, John Carlson, Frank Carson, R. G. Akeman, Arvi Larson, Jack Casperson, John McMahon, Charles Anderson, James Smith, Howard Dyer, G. L. Adams, Frank Wheeler, Marion Ruiz, Melvin Besonday, J. R. Cooper and Carl Nelson, Defendants.

COMPLAINT—Criminal

Personally appeared before me, this 24th day of February, 1939, Alvin M. Cibula, Assistant District Attorney, County of Shasta, who being first duly sworn, complains and accuses Richard Gladstein, John Morgan, John Walker, John Wiese, Mike Brovich, James Freeman, Marx Barichvich, E. P. Glad, J. R. Cooper, Harold Allinger, L. A. Powell, E. J. Cherry, Ray Standow, Harold Arrasmith, George Snell, John Carlson, Frank Carson, R. G. Akeman, Arvid Larson, Jack Casperson, John McMahon, Charles Anderson, James Smith, Howard Dyer, G. L. Adams, Frank Wheeler, Marion Ruiz, Melvin Besonday and Carl Nelson [fol. 2] of the crime of Picketing, in violation of the anti-Picketing Ordinance of the County of Shasta, State of California, passed by the Board of Supervisors of the County of Shasta, State of California, on the 4th day of April, 1938, committed as follows:

That the above-named defendants did on or about the 24th day of February, 1939, wilfully and unlawfully loiter, picket, and display signs and banners in a public place and in and upon a public highway in front of, and in the vicinity of the Delta Tunnel Project, in Number Nine Township, County of Shasta, State of California, for the purpose of inducing and influencing persons to refrain from doing and

performing services and labor at said Delta Tunnel Project, in violation of that certain ordinance passed by the Board of Supervisors of the County of Shasta, State of California, on the 4th day of April, 1938, entitled, "An Ordinance Prohibiting Loitering, Picketing, Carrying or Displaying Banners, Badges, Signs or Transparencies, or Speaking in Public Streets, Sidewalks, Alleys or Other Public Places in a Loud or Unusual Tone, for Certain Purposes Therein Named, and Providing a Penalty for Any Violation Thereof."

Said complainant therefore prays that a warrant may be issued for the arrest of the above-named defendants, and that they may be dealt with according to law.

Alvin M. Cibula.

Subscribed and sworn to before me this 24th day of February, 1939.

Marie C. Mahon, Justice of the Peace of Township Number Nine. (Seal.)

[fol. 3] ORDER

It appearing to me that the offense of Picketing, in violation of the Anti-Picketing Ordinance of the County of Shasta, State of California, passed by the Board of Supervisors of the County of Shasta, State of California, on the 4th day of April, 1938, as charged and set out in the within complaint, has been committed, and that there is sufficient cause to believe the within named defendants guilty thereof, I order that they be held to answer the same, and that they be admitted to bail in the sum of One Hundred and no/100— Dollars each, and they are hereby committed to the Sheriff of Shasta County, until they give such bail.

Dated: February 24th, 1939.

Marie C. Mahon, Justice of the Peace of Township Number Nine. (Seal.)

[fol. 4] IN JUSTICE'S COURT OF TOWNSHIP NUMBER NINE, COUNTY OF SHASTA

[Title omitted]

MOTION TO DISMISS, TO QUASH COMPLAINT AND OBJECTIONS TO JURISDICTION—Filed March 3, 1939

The defendants named in the within action hereby object, and each of them does hereby object, to the jurisdiction of

the above-entitled court to hear and try the above cause, and the above-entitled court is hereby petitioned, and motions to that effect are hereby made to quash the complaint on file herein, and to dismiss said cause and said complaint for the reason that said court does not have jurisdiction to entertain said complaint or hear and try said cause on the ground that said complaint does not state a public offense against the defendants or any of them; that said complaint is based entirely upon certain portions of Section 2 of an ordinance known as the Anti-Picketing Ordinance of Shasta County, which said portions of said Section 2 are unconstitutional and invalid, and the enforcement of which against these defendants and the arrest and prosecution of these defendants thereunder, is unconstitu-
[fol. 5] tional and invalid.

That said unconstitutionality and invalidity consists in this: That said portions of Section 2 aforesaid, and the enforcement thereof against these defendants, and the arrest and prosecution of these defendants thereunder, and the complaint in this cause which is based solely and entirely upon said portions, are and each of them is in contravention of:

I

Article XIV, Section 1 of the Constitution of the United States, in that defendants and each of them are, by virtue of said complaint and said portions of said Section 2 of said ordinance, and the enforcement thereof against these defendants, and the arrest and prosecution of these defendants thereunder, deprived by the State of California and by the County of Shasta of liberty and property without due process of law, to-wit: of freedom of speech, freedom of press, and freedom of assembly.

II

Article I, Section 1 of the Constitution of the State of California, in that the defendants and each of them are deprived by said complaint, said portions of Section 2 of said ordinance, and the enforcement thereof against these defendants, and the arrest and prosecution of these defendants thereunder, of the right of enjoying and defending liberty, and of acquiring, possessing and protecting property, and
[fol. 6] of pursuing and obtaining safety and happiness.

III

Article I, Section 9 of the Constitution of the State of California, in that the defendants and each of them are deprived by said complaint, said portions of Section 2 of said ordinance, and the enforcement thereof against these defendants, and the arrest and prosecution of these defendants thereunder, of the right freely to speak, write, and publish their sentiments, and further that the liberty of speech and the liberty of press of the defendants and each of them is restrained and abridged by said portions of Section 2 of said ordinance.

IV

Article I, Section 10 of the Constitution of the State of California, in that the defendants and each of them are deprived by said complaint, said portions of Section 2 of said ordinance, and the enforcement thereof against these defendants, and the arrest and prosecution of these defendants thereunder, of the right to freely assemble together to consult for the common good, to instruct their representatives, and to petition the legislature for redress of grievances.

V

Article I, Section 11 of the Constitution of the State of California, in that said portions of Section 2 of said ordinance do not have a uniform operation.

VI

Article I, Section 13 of the Constitution of the State of [fol. 7] California, in that the defendants and each of them are deprived by said complaint, said portions of Section 2 of said ordinance, and the enforcement thereof against these defendants, and the arrest and prosecution of these defendants thereunder, of liberty and property without due process of law.

VII

Article I, Section 21 of the Constitution of the State of California, in that said portions of Section 2 of said ordinance grant and confer upon a class of citizens, to-wit: the employing class, special privileges and immunities which, upon the same terms, are not granted to all citizens.

VIII

Article XI, Section 11 of the Constitution of the State of California, in that said portions of Section 2 of said ordinance purport to be and are local and police regulations which are, and the enforcement thereof against these defendants, and the arrest and prosecution of these defendants thereunder is, in conflict with the general laws of the State of California.

IX

The National Labor Relations Act, 49 U. S. Statutes 449, in that said complaint, said portions of Section 2 of said ordinance, and the enforcement thereof against these defendants, and the arrest and prosecution of these defendants thereunder, deny, abridge, and interfere with the right of the defendants and each of them to self-organization, to [fol. 8] form, join, and assist labor organizations, to bargain collectively through representatives of their own choosing, to the exercise by defendants as workers of full freedom of association, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection.

X

Section 923 of the Labor Code of the State of California, in that said complaint, said portions of Section 2 of said ordinance, and the enforcement thereof against these defendants, and the arrest and prosecution of these defendants thereunder, abridge and interfere with the right of the defendants and each of them to have full freedom of association, self-organization, and designation of representatives of their own choosing to negotiate the terms and conditions of their employment, and further that said defendants and each of them are denied and deprived of freedom from interference, restraint and coercion in the designation of such representatives, in self-organization, and in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

Wherefore, the defendants and each of them pray that the foregoing objections to the jurisdiction as aforesaid of the court be sustained, and that the within motions to quash said complaint and to dismiss said cause and complaint as

aforesaid be forthwith granted, and that the defendants and [fol. 9] each of them be hence restored to their liberty.

Dated: March 3, 1939.

Gladstein, Grossman and Margolis, Attorneys for Defendants.

[fol. 10] IN JUSTICE'S COURT OF TOWNSHIP NUMBER NINE, COUNTY OF SHASTA

[Title omitted]

DEMURRER TO COMPLAINT—Filed March 3, 1939

Comé now the defendants in the above action and demurring to the complaint on file herein, each for himself, specifies and alleges as follows:

I

That said complaint does not state a public offense against these defendants or any of them, and the facts stated in said complaint do not constitute a public offense as to these defendants or any of them, for the reason that said complaint and the portions of Section 2 of the ordinance upon which said complaint is based, do and each of them does, and the enforcement or threatened enforcement against these defendants of said portions of Section 2 of said ordinance, and the arrest and prosecution of these defendants thereunder, does violate and contravene Article XIV, Section 1 of the United States Constitution and Article I, Sections 1, 9, 10, 11, 13 and 21, and Article XI, Section 11 [fol. 11] of the Constitution of the State of California, and the provisions of the National Labor Relations Act, and Section 923 of the California Labor Code, by depriving the defendants and each of them of their liberty, property, freedom of speech, freedom of press, freedom of assembly, and freedom to engage in concerted activities as workers for their mutual aid and protection. By reason whereof said portions of Section 2 of said ordinance are, and the enforcement and threatened enforcement thereof against these defendants, and the arrest and prosecution of these defendants thereunder are, and the said complaint based upon said portions of Section 2 of said ordinance is, unconstitutional and invalid.

Wherefore, the defendants pray that the court forthwith dismiss the within case, allow the within demurrer, and that the defendants be hence restored to their liberty.

Dated: March 3, 1939.

Gladstein, Grossman and Margolis, Attorneys for Defendants.

[fol. 12] IN JUSTICE'S COURT OF TOWNSHIP NUMBER NINE, COUNTY OF SHASTA

[Title omitted]

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEMURRER, MOTION TO DISMISS, AND OBJECTIONS TO JURISDICTION—Filed March 3, 1939

A judicial tribunal has no jurisdiction to hold or try a defendant under an invalid law.

Ex-parte Paley, 155 Cal. 472;

Ex-parte Kearny, 55 Cal. 212;

Matter of Zany, 20 Cal. App. 360.

Peaceful picketing and loitering are protected by constitutional provisions of the United States and of the State of California.

Federal Constitution, Article XIV, Section 1;

California Constitution, Article I, Sections 1, 9, 10, 11, 13, and 21; Article XI, Section 11.

A county ordinance prohibiting peaceful picketing and loitering is invalid.

Lisse vs. Local Union, 2 Cal. (2d) 312;

[fol. 13] In re Williams, 158 Cal. 550;

In re Lyons, 94 Cal. App. Dec. 70.

Respectfully submitted,

Gladstein, Grossman & Margolis, Attorneys for Defendants.

[fol. 14] IN JUSTICE'S COURT OF NUMBER NINE TOWNSHIP, COUNTY OF SHASTA

[Title omitted]

STIPULATION AS TO TRIAL—Filed March 21, 1939

It is hereby stipulated, by and between Laurence W. Carr, Esq., District Attorney of the Shasta County, and

Richard Gladstein, Esq., Attorney for the above-entitled defendant, that the time of trial of the above entitled and numbered case previously set for March 20th, 1939, is postponed and set over to the 11th day of April, 1939, for trial.

And it is hereby expressly stipulated that the defendant hereby waives his statutory right to be tried within thirty days from the date of his arraignment.

Dated March 21, 1939.

Laurence W. Carr, District Attorney. Richard Gladstein, Attorney for Defendant.

[fol. 15] In Justice's Court of Township Number Nine, County of Shasta

[Title omitted]

Motion to Dismiss—Filed April 11, 1939

The defendant hereby moves the court that the within action and the complaint herein be forthwith dismissed, and for grounds for said motion specifies as follows:

I

Each and every, all and singular, the grounds, statements, allegations and averments contained in that certain "motion to dismiss, to quash complaint, and to objections to jurisdiction" heretofore filed in the within proceeding, all of which are hereby referred to and by this reference incorporated herein in full as though set forth at length herein.

II

Upon the further ground that the evidence introduced by the plaintiff is insufficient in fact and/or as a matter of law to justify or support a judgment of conviction, and that a judgment of conviction based upon the evidence intro-
[fol. 16] duced by the plaintiff would not be supported by the evidence, and would be contrary to the evidence.

III

Upon the further ground that, based upon the evidence introduced by the plaintiff, the application of the aforesaid

anti-picketing ordinance thereto and to the defendant, and the construction of the said ordinance in such manner as to make the same apply to a case based upon the evidence introduced by the plaintiff, would and does deprive the defendant of substantial and constitutional rights, as more particularly set forth in the aforementioned "motion to dismiss, to quash complaint, and objections to jurisdiction."

Wherefore the defendant prays that the court grant the within motion, and forthwith dismiss the said complaint and the said case, and forthwith restore the defendant to his liberty.

Dated: This 11th day of April, 1939.

Gladstein, Grossman and Margolis, Attorneys for Defendant.

[fol. 17] IN JUSTICE'S COURT OF TOWNSHIP NUMBER NINE, COUNTY OF SHASTA

[Title omitted]

STIPULATION RE CONTINUANCE—Filed April 24, 1939

It is hereby stipulated that the trial of the above matter may be continued from April 25th to April 28th, 1939, at 10 A. M. o'clock, and all objections to such continuance are hereby waived.

Dated: This 24th day of April, 1939.

Lawrence W. Carr, Attorney for Plaintiff. Gladstein, Grossman & Margolis, Attorney for Defendant.

[fol. 18] IN JUSTICE'S COURT OF TOWNSHIP NUMBER NINE, COUNTY OF SHASTA

[Title omitted]

MOTION TO DISMISS AT CONCLUSION OF TRIAL—Filed April 28, 1939

The defendant hereby moves the court that the within action and the complaint herein be forthwith dismissed, and for grounds for said motion specifies as follows:

I

Each and every, all and singular, the grounds, statements, allegations and averments contained in that certain "motion

to dismiss, to quash complaint, and to objections to jurisdiction" heretofore filed in the within proceeding, all of which are hereby referred to and by this reference incorporated herein in full as though set forth at length herein.

II

Upon the further ground that the evidence introduced by the plaintiff is insufficient in fact and /or as a matter of law to justify or support a judgment of conviction, and that a judgment of conviction based upon the evidence intro-
[fol. 19] duced by the plaintiff would not be supported by the evidence, and would be contrary to the evidence.

III

Upon the further ground that, based upon the evidence introduced by the plaintiff, the application of the aforesaid anti-picketing ordinance thereto and to the defendant, and the construction of the said ordinance in such manner as to make the same apply to a case based upon the evidence introduced by the plaintiff, would and does deprive the defendant of substantial and constitutional rights, as more particularly set forth in the aforementioned "motion to dismiss, to quash complaint, and objections to jurisdiction."

IV

Upon the further ground that, by virtue of the uncontradicted evidence introduced herein on behalf of the defendant, a judgment of dismissal of the within action is required as a matter of law, for the reason that a judgment of conviction of the defendant would not be justified or supported by the evidence introduced herein.

V

Upon the further ground that, based upon the evidence introduced by the plaintiff and on behalf of the defendant, a judgment of conviction of the defendant would deprive the defendant of substantial and constitutional rights, as more particularly set forth in that certain "motion to dis-
[fol. 20] miss, to quash complaint, and objections to jurisdiction" heretofore filed in the within proceeding.

Wherefore, the defendant prays that the court grant the within motion, and forthwith dismiss the said complaint and

the said case, and forthwith restore the defendant to his liberty.

Dated: This 28th day of April, 1939.

Gladstein, Grossman and Margolis, Attorneys for Defendant.

[fol. 21] In Justice's Court of Township Number Nine, County of Shasta

[Title omitted]

Motion in Arrest of Judgment—Filed April 28, 1939

The defendant hereby makes a motion in arrest of judgment herein, and for grounds for said motion specifies as follows:

I

The complaint in this action is substantially defective, for the reason that it does not state a public offense against this defendant, and the facts stated in said complaint do not constitute a public offense as to this defendant, and the court does not have jurisdiction to entertain said complaint or hear or try said cause upon said complaint, or base any judgment of conviction thereon or upon the evidence introduced herein, for the reason that said complaint is based entirely upon certain portions of Section 2 of an ordinance known as the Anti-picketing Ordinance of Shasta County, which said portions of said Section 2 are unconstitutional and invalid, and the enforcement of which against this defendant, and the arrest and prosecution of this defendant [fol. 22] thereunder, and the conviction of this defendant upon said complaint, and the conviction of this defendant upon the evidence introduced herein, are, and each of them is, unconstitutional and invalid.

That said unconstitutionality and invalidity consists in this: That said portions of Section 2 aforesaid, and the enforcement thereof against this defendant, and the arrest and prosecution of this defendant thereunder, and the conviction of this defendant of a violation thereof, and the complaint in this cause which is based solely and entirely upon said portions, are, and each of them is, in contravention of:

1.

The Fourteenth Amendment to the Constitution of the United States; in that this defendant is, by virtue of said complaint and said portions of said Section 2 of said ordinance, and the enforcement thereof against this defendant, and the arrest and prosecution of this defendant thereunder, and the conviction of this defendant of a violation thereof, deprived by the State of California and by the County of Shasta of liberty and property without due process of law, to-wit: of freedom of speech, freedom of press, and freedom of assembly, and freedom of locomotion.

2

Article I, Section 1 of the Constitution of the State of California, in that this defendant is deprived by said complaint, said portions of Section 2 of said ordinance, and [fol. 23] the enforcement thereof against this defendant, and the arrest and prosecution of this defendant thereunder, and the conviction of this defendant of a violation thereof, of the right of enjoying and defending liberty, and of acquiring, possessing and protecting property, and of pursuing and obtaining safety and happiness.

3

Article I, Section 9 of the Constitution of the State of California, in that this defendant is deprived by said complaint, said portions of Section 2 of said ordinance, and the enforcement thereof against this defendant, and the arrest and prosecution of this defendant thereunder, and the conviction of this defendant of a violation thereof, of the right freely to speak, write, and publish his sentiments, and further that the liberty of speech and the liberty of the press of this defendant is restrained and abridged by said portions of Section 2 of said ordinance.

4

Article I, Section 10 of the Constitution of the State of California, in that this defendant is deprived by said complaint, said portions of Section 2 of said ordinance, and the enforcement thereof against this defendant, and the arrest and prosecution of this defendant thereunder, and the conviction of this defendant of a violation thereof, of the right

to freely assemble to consult for the common good, to instruct representatives, and to petition the legislature for redress of grievances.

[fol. 24]

5

Article I, Section 11 of the Constitution of the State of California, in that said portions of Section 2 of said ordinance do not have a uniform operation.

Article I, Section 13 of the Constitution of the State of California, in that this defendant is deprived by said complaint, said portions of Section 2 of said ordinance, and the enforcement thereof against this defendant, and the arrest and prosecution of this defendant thereunder, and the conviction of this defendant of a violation thereof, of liberty and property without due process of law.

7

Article I, Section 21 of the Constitution of the State of California, in that said portions of Section 2 of said ordinance grant and confer upon a class of citizens, to-wit: the employing class, special privileges and immunities which, upon the same terms, are not granted to all citizens.

8

Article XI, Section 11 of the Constitution of the State of California, in that said portions of Section 2 of said ordinance purport to be and are local and police regulations which are, and the enforcement thereof against this defendant, and the arrest and prosecution of this defendant thereunder, and the conviction of this defendant of a violation thereof, is in conflict with the general laws of the State of California.

[fol. 25]

9

The Fourteenth Amendment to the Constitution of the U. S., and the National Labor Relations Act, 49 U. S. Statutes 449, in that said complaint, said portions of Section 2 of said ordinance, and the enforcement thereof against this defendant, and the arrest and prosecution of this defendant thereunder, and the conviction of this defendant of a violation thereof, deny, abridge and intertere with the right of the defendant to form, join, and assist

labor organizations, to bargain collectively through representatives of his own choosing, to the exercise by defendant as a worker of full freedom of association, and to engage in concerted activities, including picketing, for the purpose of collective bargaining or other mutual aid or protection, thereby depriving defendant of property without due process of law.

10

Section 923 of the Labor Code of the State of California, in that said complaint, said portions of Section 2 of said ordinance, and the enforcement thereof against this defendant, and the arrest and prosecution of this defendant thereunder, and the conviction of this defendant of a violation thereof, abridge and interfere with the right of the defendant to have full freedom of association and designation of representatives of his own choosing to negotiate the terms and conditions of his employment, and further that said defendant is denied and deprived of freedom from interference, restraint and coercion in the designation of such repre- [fol. 26] sentatives and in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

11

The Fourteenth Amendment to the Constitution of the United States, in that this defendant is, by virtue of said complaint and said portions of said Section 2 of said ordinance, and the enforcement thereof against this defendant, and the arrest and prosecution of this defendant thereunder, and the conviction of this defendant of a violation thereof, denied by the State of California and by the County of Shasta of the equal protection of the laws.

WHEREFORE, this defendant prays that the foregoing motion in arrest of judgment be granted, and that the said complaint be dismissed, and that the judgment of conviction against defendant be quashed and set aside, and that the defendant be hence restored to his liberty.

Dated: April 28, 1939.

Gladstein, Grossman and Margolis, Attorneys for Defendants.

[fol. 27] IN JUSTICE'S COURT OF TOWNSHIP NUMBER NINE, COUNTY OF SHASTA

[Title omitted]

NOTICE OF APPEAL FROM JUDGMENT OF CONVICTION—Filed May 2, 1939

To the Honorable Marie C. Mahon, Justice of the Above Entitled Court, and to Lawrence W. Carr, District Attorney of the County of Shasta:

Please take notice that the defendant, John Carlson, hereby appeals to the Superior Court of the State of California in and for the County of Shasta from that certain judgment of conviction made and entered against him on the 28th day of April, 1939 in the above entitled action, and from the whole thereof. This appeal is taken on the questions of both law and fact.

Dated: May 1st, 1939.

——— ———, ———, Attorneys for Defendant.

[fol. 28] IN JUSTICE'S COURT OF TOWNSHIP NUMBER NINE, COUNTY OF SHASTA

[Title omitted]

DEFENDANT'S STATEMENT ON APPEAL, AND APPLICATION TO TRIAL COURT STATING GROUNDS OF APPEAL, AND POINTS ON WHICH DEFENDANT RELIES, AND DESIGNATION OF PORTIONS OF REPORTER'S NOTES NECESSARY TO HAVE TRANSCRIBED—Filed May 5, 1939

To the Honorable Marie C. Mahon, Justice of the Above Entitled Court, and to Lawrence W. Carr, District Attorney of Shasta County, and to the Clerk of Said Court:

Whereas the defendant above named having on the second day of May, 1939 duly taken an appeal from the judgment entered in the above action by the said court on the 28th day of April, 1939,

You and Each of You Are Hereby Notified that said defendant now presents this, his statement of appeal and the

grounds of appeal and points on which he relies upon appeal from the above entitled court to the Superior Court of the [fol. 29] State of California, in and for the County of Shasta, as follows, to-wit:

I

That the evidence taken and heard by the court in said cause was insufficient to justify the judgment.

II

That the judgment is contrary to law.

III

That the judgment is contrary to the evidence.

IV

That the judgment is contrary to the law and the evidence.

V

That the court erred in its decisions on matters and questions of law arising during the course of the trial.

VI

That the court erred in refusing to grant the defendant's "motion to dismiss, to quash complaint, and objections to jurisdiction", which is hereby referred to and by this reference incorporated herein in full.

VII

That the court erred in over-ruling the defendant's "demurrer to complaint", which is hereby referred to and by this reference incorporated herein in full.

VIII

That the court erred in refusing to grant the defendant's [fol. 30] "motion to dismiss" made at the conclusion of the People's case, which is hereby referred to and by this reference incorporated herein in full.

IX

That the court erred in refusing to grant the defendant's "motion to dismiss at conclusion of trial", which is hereby

referred to and by this reference incorporated herein in full.

X

That the court erred in refusing to grant the defendant's "motion in arrest of judgment", which is hereby referred to and by this reference incorporated herein in full.

Defendant now designates what portions of the phonographic reporter's notes are necessary to be transcribed to fairly present the points relied upon by the defendant:

I

All of the evidence received and taken down by the phonographic reporter during the trial of the case, including all rulings and remarks of the court and objections made by either side during the course of the trial and the rulings and comments of the court thereon.

II

All of the motions, demurrers, and legal objections made or filed to the complaint or to the evidence introduced by the People or to the evidence introduced in the case.

III

All of the proceedings throughout and during the trial [fol. 31] of said action, and at the time the defendant made various motions and filed demurrers and other legal objections as shown by the record of the case.

IV

All of the proceedings at the time the defendant took his appeal.

The defendant now asks that the court make an order for the transcription thereof and that said transcript shall constitute and be the defendant's proposed statement of the evidence on appeal, and the defendant further asks that there be delivered to him within the time required by law a copy of the phonographic reporter's notes and also a copy of the transcript on appeal in said action.

Dated: May 3rd, 1939.

Gladstein, Grossman & Margolis, Attorneys for the Defendant.

Let the transcript be prepared in accordance with the foregoing application, and said transcript shall be and constitute the defendant's proposed statement of the evidence on appeal.

Dated: May 31, 1939.

Marie C. Mahon, Justice of the above entitled Court.

[fol. 32] IN JUSTICE'S COURT OF TOWNSHIP NUMBER NINE, COUNTY OF SHASTA

[Title omitted]

STIPULATION CONCERNING STATEMENT OF EVIDENCE ON APPEAL

It is hereby stipulated that the transcript of the phonographic reporter of the testimony and evidence introduced in the trial of the above action may and shall be and constitute the defendant's proposed statement of evidence on appeal, and likewise the People's proposed statement of evidence on appeal, and that when the said transcript has been prepared and approved as correct by the above court, the same shall in all respects be and constitute *and* record of the above action and shall be in lieu of any proposed statements of evidence required by the Rules of the Judicial Council of the State of California and the statutes in such cases made and provided.

Dated: May 3rd, 1939.

Lawrence W. Carr, District Attorney. Gladstein, Grossman & Margolis, Attorneys for Defendant.

[fol. 33] ORDER

Pursuant to the above stipulation it is hereby ordered that the reporter's transcript of the testimony and evidence introduced in the trial of the above action shall be and constitute, when approved as correct by the court, the record on appeal in the within action, and shall be in lieu of any other statements or proposed statements of evidence required by the Rules of the Judicial Council and the statutes in such cases made and provided.

Dated: May 31, 1939.

Marie C. Mahon, Justice of the above entitled Court.

[fol. 34] IN JUSTICE'S COURT OF TOWNSHIP NUMBER NINE, COUNTY OF SHASTA

[Title omitted]

MINUTE ENTRIES IN JUSTICE'S DOCKET BOOK

February 24, 1939. Complaint filed. Warrant issued. Warrant returned. Defendants in court and state their true names to be: Richard Gladstein, John Morgan, John Walker, John Wiese, James Freeman, E. P. Glad, L. A. Powell, Ray Standow, Frank Carson, James Smith, and G. L. Adams. Marion Ruiz, J. R. Cooper, E. J. Cherry, Melvin Besonday, Mike Brovich, Marx Barichvich, Harold Allinger, Harold Arrasmith, George Snell, John Carlson, Jack Casperson, John McMahon, Howard Dyer, Frank Wheeler, Carl Nelson, Arvi Larson, R. G. Akeman, are ordered admitted to bail in the sum of $100 each and time to plead set for February 28, 1939, at 10 o'clock A. M. Defendants committed in default of bail.

February 28, 1939. 10 o'clock A. M. Justice R. P. Stimmel presiding. Case called. Defendants with counsel Richard Gladstein, Esq., and Alvin Cibula, Deputy District At-[fol. 35] torney, in court. Defendants each entered pleas of "not guilty" to the offense charged. Defendants make motion for a reduction of bail. Defendants move court for separate trials for each defendant. Motions for reduction of bail and for separate trial taken under advisement to March 3, 1939, at 9:30 o'clock A. M. Time to set date of trial set for March 3, 1939 at 9:30 o'clock A. M. Bail bond filed for defendants Richard Gladstein, John Morgan, John Walker, John Wiese, James Freeman, E. P. Glad, L. A. Powell, Ray Standow, Frank Carson, James Smith, G. L. Adams, Marion Ruiz, J. R. Cooper, E. J. Cherry, Melvin Besonday, Mike Brovich. Bond approved and said defendants ordered released from custody.

March 2, 1939. Order issued for release of defendants Harold Allinger and John Carlson on their own recognizance.

March 3, 1939. Defendants with their counsel Richard Gladstein, Esq., and Harold Symonds, Esq.; Alvin E. Cibula, Deputy District Attorney, in court. Defendants move to withdraw pleas of "not guilty" of the offense charged for the purpose of filing a demurrer. Motion taken under ad-

visement until 2:30 o'clock P. M. of March 3, 1939. Motion for reduction of bail and separate trial continued to 2:30 o'clock P. M. by stipulation in open court. Defendant Harold Allinger ordered remanded into custody of the Sheriff of Shasta county until he furnish bail of $100. Order releasing said defendant Harold Allinger ordered vacated.

March 3, 1939. Richard Gladstein, attorney for defendants, and Alvin Cibula, Deputy District Attorney, in court. [fol. 36] Motion to withdraw pleas of "not guilty" granted. Defendants withdraw pleas of "not guilty" heretofore entered. Demurrer to complaint and motion to dismiss filed. Demurrer overruled and motion to dismiss denied. Defendants enter plea of "not guilty" of the offense charged. Motion for separate trials by stipulation ordered dropped from the calendar and may be renewed. Motion to reduce bail withdrawn, with right to renew motion. Trial set for March 20, 1939, for defendant John Carlson, at 10 o'clock A. M. by stipulation in open court. Separate trials granted to defendants John Carlson and Carl Nelson by stipulation in open court. Trial of defendant Carl Nelson set for March 21, at 10 o'clock A. M. Trial set as to remainder of defendants for March 29th at 10 o'clock A. M.

March 14, 1939. Defendant John McMahon ordered released on his own recognizance.

March 15, 1939. Defendants Harold Arrasmith and Harold Dyer ordered released on their own recognizance.

[fol. 1] In Justice's Court of Township Number Nine, County of Shasta

Before Honorable Marie C. Mahon, Justice of the Peace.

[Title omitted]

Statement of Evidence

Trial

On Complaint Charging Picketing: Violation of Anti-Picketing Ordinance of Shasta County.

Court Room of the Justice of the Peace, Redding, California.

Tuesday, April 11, 1939, 10:30 A. M.

APPEARANCES

For the People

Lawrence W. Carr, Esq., District Attorney, and John Span, Esq., Deputy District Attorney.

For the Defendant

Richard Gladstein, Esq., for Gladstein, Grossman & Margolis.

The trial of this case before the Justice's Court of Township No. Nine, County of Shasta, State of California, came on regularly for hearing before the Honorable Marie C. [fol. 2] Mahon, on the 11th day of April, 1939. The defendant was present in court and was represented by counsel. Thereupon the following proceedings were had:

COLLOQUY

The Court: People vs. Carlson. Are you ready?

Mr. Carr: The People are ready.

Mr. Gladstein: Your Honor, there was a motion to dismiss the complaint and objections to the jurisdiction of the court, and also a demurrer to the complaint, all of which were filed in the case of People vs. Gladstein, et al. One of the defendants in that case was the defendant Carlson. Subsequently, by stipulation with the District Attorney, the case against Carlson was separated from the other defendants. Carlson waived his right to be tried by a jury; the other defendants in the case demanded a jury trial. This accounts for the present case taking place at this time, whereas the co-defendants of Carlson have yet to be tried before a jury at sometime in the future.

I would like the record to show, however, that the demurrer, motions and objections which were filed jointly and severally in behalf of all the defendants, including the defendant Carlson, in the case of People vs. Gladstein, et al., are preserved in the record in this case, and I will undertake to file new copies of such pleadings in the record here.

I assume that the record here may also record the fact that these motions, the demurrer and the objections have pre- [fol. 3] viously been argued to the court and were overruled. Is that satisfactory, Mr. Carr?

Mr. Carr: Yes. And may it also be stipulated that this is the time and place for the trial of People vs. John Carlson, and that the defendant waives any objections to the place of trial?

Mr. Gladstein: We will so stipulate.

The Court: Do you want the complaint read?

Mr. Gladstein: We will waive the reading of the complaint.

Mr. Carr: The first evidence introduced on the part of the people is a certified copy of the anti-picketing ordinance.

Mr. Gladstein: No objections. I assume that may be introduced in the evidence, your Honor, as People's Exhibit A?

Mr. Carr: It is so marked.

The Court: Admitted.

Mr. Carr: I now call Mr. Cibula.

Alvin M. Cibula, a witness produced and sworn for the people, testified as follows:

Mr. Carr: Your name is Alvin Cibula?

A. That is correct.

Q. On the morning of February 24th, were you called or directed to go to the Delta Tunnel Project in Shasta County?

A. Yes, I was.

[fol. 4] Q. And that is Township No. 9, County of Shasta?

A. It is.

Q. Will you state just what transpired on your arrival there?

A. This Delta Tunnel Project is located approximately 32 miles north of Redding. On the morning of February 24th, 1939, acting upon instructions from the District Attorney of Shasta County, I proceeded to the Delta Tunnel Project arriving at approximately 7:15 A. M. The project is a construction job conducted by the United Concrete Pipe Corporation, and its apparent purpose is to build a tunnel in connection with the re-location of the Southern Pacific Railroad. A main public highway known as U. S. Highway 99 runs near the project bearing generally north and south. The highway consists of a public right of way approximately 80 feet in width. The paved portion of this highway at or near the tunnel project is about 20 or 21 feet

wide. There is approximately 30 feet of ungravelled right of way at each side of the paved portion. The Delta Project is located approximately east of the highway. The project itself on this particular day was fenced in by a wooden fence running parallel with the highway and this fence is located a distance of 50 to 100 feet from the easterly line of the paved part of the highway. There is a gate through this fence for entrance and exit purposes. Shortly after my arrival on the morning of February 24th, workers who apparently——

Mr. Carr: (Interrupting). What time did you arrive?

[fol. 5] A. 7:15 A. M. I believe I stated that already. Workers began going through the gate and into the project grounds. It was my understanding that the belonged to an American Federation of Labor union. The work on this project at that time consisted of clearing away brush and the construction of wooden camps for the purpose of housing. At approximately 7:30 A. M., it might have been a little later, a group of 29 men in five or six automobiles came up from the general direction of Redding, parked their cars off the highway on public property which was not being used, got out of their machines and started picketing. The picketing of this group of men took place alongside the easterly line of the paved portion of the highway in the vicinity and in front of the Delta Tunnel Project. Several of the 29 men who were picketing carried banners. The defendant, John Carlson, was one of the 29 men. The picketing consisted of walking a distance of 50 to 100 feet in a general northerly direction, then turning around and retracing steps and continuing as before. As I said before, the defendant, John Carlson, was one of those who were picketing, and I might state at this time that all of the walking in connection with the picketing by the defendant and the others was done off the paved portion of the highway and on the gravelled portion of the right of way, that is, on public property. At approximately ten minutes to nine, Sheriff Sublett of Shasta County arrived with some deputies and proceeded to place all of the pickets, including [fol. 6] John Carlson, under arrest for picketing in violation of the ordinance.

Mr. Carr: Were these men carrying signs at that time?

A. They were.

Q. Members of this group were carrying signs?

A. Members of this group were carrying signs.

Q. And do you know what became of those signs?

A. Those particular signs were later impounded by the Sheriff and were kept in the Sheriff's office pending trial.

Q. And have you since seen those signs?

A. I have.

Q. And where are they at the present time? Can you identify them?

A. I can identify them. I understand they are in here.

Q. Will it be stipulated that these four signs were the signs being carried by members of that group on the 24th of February——

A. I beg your pardon. There are more signs; there are only four here.

Q. Yes. Well, it will be stipulated that these four were being carried——

Mr. Gladstein: Yes, I so stipulate.

Mr. Carr: We offer these and ask that they be marked People's Exhibits, I suppose you can call them B1, B2, B3 and B4. For the purpose of the record, is there any objection to Mr. Cibula's describing each of these signs?

[fol. 7] Mr. Gladstein: None whatsoever.

Mr. Cibula: There are four signs here which are representative of the signs carried. Each of them reads differently. The exhibit marked "B 1" reads: "Don't be a scab," in black letters painted on white cardboard paper. The cardboard is about 14 x 22 inches in size. The cardboard is tacked on to a stick which is 34 inches long, 1½ inches wide and ¼ of an inch thick. The cardboard is backed by two strips similar to the stick which carries this sign. The letters range in size from 2 inches in height to approximately 4½ or 5 inches in height. The exhibit marked Exhibit "B 2" reads: "Shasta Tunnel and Construction Workers Local #260". The letters are painted in black paint similar to Exhibit B 1 except that the letters range in height from 1½ inches to approximately 3 inches. It is on a stick similar to Exhibit B 1. The exhibit marked Exhibit "B 3" reads: "CIO Picket Line." The sign is similar to the other two signs except for wording and height of letters. The height of the letters on this particular exhibit is approximately 4½ inches. The exhibit marked Exhibit "B 4" is of the same size and description as Exhibit B 1 except that this sign reads as follows: "This Job Unfair to CIO." The

letters are black, painted on a white cardboard, and range from 3 inches in height to approximately 5 inches in height. I will identify those four exhibits as being some of the signs which were carried by the pickets on the morning of February 24th at the Delta Tunnel Project.

[fol. 8] Mr. Carr: Approximately how many of the 29 were carrying signs?

A. I would say approximately 10 or 12. I couldn't say for certain at this time.

Q. And this picketing, just exactly what part did those not carrying signs have in the picketing?

A. They walked along the so-called picketing area with those who were carrying signs. Generally two by two.

Q. Now, how were these signs displayed? Was it in a manner that they were being shown to the workers on the job?

A. They were carried in such manner that the signs could be seen both by the workers on the job and any person or persons who might be going along the highway in either direction. They were displayed in such manner that they could be seen from all angles at some time or other.

Q. Now at the time of this picketing, did you see the tunnel job itself from where you were?

A. Oh yes.

Q. And could you determine whether or not at all times there were workers working on the tunnel job?

A. As I remember it, there were a few men in the locality of the job when I arrived at 7:15 and immediately thereafter, there were more men arriving on the job who either walked down or drove down to the job in their cars from the highway through the gate.

Q. And there were men working on the job?

[fol. 9] A. There were approximately 30 men working on the job.

Q. And was there continuous traffic on the highway?

A. There was continuous traffic on the highway.

Mr. Carr: That is all.

Cross-examination:

Mr. Gladstein: Mr. Cibula, the signs which you have described and which are People's Exhibits B1, B2, B3 and B4, are all approximately of the same dimensions?

A. They are.

Q. Now the fence which you have mentioned as running parallel with the highway known as No. 99, and which surrounds the project grounds, that fence, I think you said, was about 50 to 100 feet east of the easterly line of the paved portion of the highway. Correct?

A. Yes. I am just remembering my impression at this time. I would not say that it was exactly any particular distance.

Q. No, well it isn't so much with respect to the distance but with respect to the next question. The men who were working on the job were working on the grounds at points east of that fence, isn't that so?

A. Generally east.

Q. Now, calling your attention to the defendant, John Carlson, it is true, is it not, that he did not make any loud or unusual or any noises at any time?

[fol. 10] A. That is correct.

Q. It is also true that he did not commit any disturbance of the peace?

A. That is true insofar as my observation is concerned.

Q. And did he trespass on private property?

A. He did not.

Q. And he did not, as far as your observation is concerned, threaten or intimidate or coerce anyone?

A. That is true.

Q. Isn't it a fact, also, that he did not carry or possess any weapons? That is correct?

A. Not that I could see. I believe it to be correct.

Q. Wasn't he searched after being arrested and as far as you know, no weapon of any kind was found?

A. That is correct.

Q. Is it not also true that in connection with his picketing, the defendant John Carlson did not obstruct the traffic of persons or automobiles along the paved portion of the highway?

A. That is correct.

Q. Or elsewhere for that matter?

A. That is correct.

Q. And in all of the activities of the defendant Carlson, is it not true that he was peaceable and orderly?

A. From the standpoint of demeanor?

Q. Yes.

A. From the standpoint of personal demeanor and personal actions, I saw nothing which would show any actual [fol. 11] disorderly conduct.

Q. There was no violence committed by the defendant Carlson?

A. There was not.

Q. Nor for that matter on the part of anyone else?

A. That is true.

Q. Did Carlson or any other picket molest or annoy anyone?

A. Insofar as my observation is concerned, no.

Q. And during all the time that you were there, no riot or disturbance of the peace occurred at any time during Carlson's picketing?

A. That is correct.

Q. Or by reason thereof?

A. That is correct.

Q. During the picketing, did you notice that persons and vehicles from time to time passed from the highway through the picket line to go to the job?

A. I did notice that.

Q. And these vehicles and persons passed freely from the picket line to enter into the job and also to make their exit from the job?

A. That is correct.

Q. And there was no physical or other molestation or interference on the part of the defendant Carlson or anyone else with any of the persons who wished to go to or leave from the job?

A. There was not.

[fol. 12] Q. So that isn't it correct that you would say that the defendant Carlson did nothing and committed no act which you would consider intimidating or coercive or threatening or violent, isn't that correct?

Mr. Carr: I object on the ground that this is an opinion and calls for the witness's conclusion.

Mr. Gladstein: Well, I will put it this way. All of Carlson's conduct that fell under your observation was considered by you to be for the purpose of persuading the A. F. of L. workers to leave their jobs?

A. That was the impression that I gained.

Q. Yes. Nothing that Carlson did was considered by you to be a violation of any state or county penal law other than the portion of the anti-picketing ordinance of this county upon which Carlson is now being tried?

A. That is correct.

Q. You were present, were you not, when the deputy sheriffs arrived and Carlson was placed under arrest?

A. I was.

Q. It is true, is it not, that Carlson offered no resistance to the arrest?

A. That is correct.

Mr. Gladstein: I think that is all.

Mr. Carr: Will it be stipulated that the Delta Tunnel Project, where other men were working, is a place of employment?

Mr. Gladstein: Oh yes.

[fol. 13] Mr. Carr: Well, that is all. The people rest.

Mr. Gladstein: Is it in the record, Mr. Carr, that all of the things that Mr. Cibula has testified to occurred within Township No. 9?

Mr. Carr: Well, that will be stipulated, I suppose.

OFFER OF MOTION TO DISMISS

Mr. Gladstein: Yes. Now I have no further questions. For the purpose of the record, I wish to offer now a motion to dismiss the action, which I now file and serve upon the District Attorney a copy. This motion, I may briefly state, reiterates all of the grounds contained in the motion previously filed in the action to dismiss upon the basis of constitutional and other legal grounds, and in addition raises the point that the evidence produced by the people, as a matter of law and for other reasons, requires dismissal of the matter. I will make no further argument at this time beyond urging that my motion be granted.

Mr. Carr: We would request or urge the Court that the motion be denied at this time on the ground that the decision of the Superior Court of Shasta County has previously denied the writ of habeas corpus on the ground that the ordinance is constitutional.

Mr. Gladstein: Has Your Honor ruled on the motion?

Mr. Carr: We would request that the motion of the defendant be denied at this time.

The Court: The motion just entered?

Mr. Carr: Yes, on the grounds as stated.

[fol. 14] The Court: Request granted. Motion denied.

JOHN CARLSON, a witness produced and sworn for the defendant, testified as follows:

Mr. Gladstein: Your name is John Carlson, is that correct?

A. Yes.

Q. And you are the defendant in this action?

A. Yes.

Q. Where do you live, Mr. Carlson?

A. 1283 California Street.

Q. In what city?

A. Redding, California.

Q. By occupation, what are you?

A. A miner.

Q. How long have you been such?

A. Well, I have been engaged in mining and quarry work and trap tunnel work since 1923.

Q. Now, the testimony of the People has indicated that you were peacefully picketing on the 24th day of February, 1939, in the vicinity of the Delta Tunnel Project. You recall that testimony, do you?

Mr. Carr: I object to that on the ground that the question as to peacefully picketing be taken from the question and that it be asked according to the actual evidence given.

Mr. Gladstein: I will withdraw the question. Simply directing your attention to the 24th of February, 1939, you [fol. 15] recall that you were in the vicinity of the Delta Tunnel Project?

A. I was.

Q. And what were you doing?

A. I was peacefully picketing at the time as Mr. Cibula stated in his testimony.

Q. And is it correct that your peaceful picketing covered a period of approximately from 7:30 to 9 o'clock?

A. Yes.

Q. Is Mr. Cibula's description of what you were doing and the manner in which you were walking substantially correct?

A. It is correct.

Q. State what your purpose was.

A. My purpose in picketing was to exercise my right to protest against being locked out of the job.

Q. Had you worked on that job previously?

A. I had worked on that job.

Q. When did you go to work on that job?

A. I was hired the 26th or 27th and told to come out and go to work.

Q. The 26th of what month?

A. Of January.

Q. Of January, 1939. And by whom were you hired?

A. Axel Carlson, Superintendent of that job.

Q. And pursuant to that, did you actually go to work?

A. Yes.

Q. And how long did you work on the job?

[fol. 16] A. Until noon of February 2nd.

Q. February 2nd?

A. Yes.

Q. What happened at that time?

A. The job shut down that day.

Q. Were the men laid off at the time the job was shut down?

A. Well, we were laid off, yes, but at that time there had been an attempt on the part of the contractors to force the men on the job to join the A. F. of L.

Q. What form did that attempt take?

A. Well, the attempt had been made by a man named Green. He was an organizer or business agent for the American Federation of Labor here in town, and he had been out to the job several times and had talked to all of the fellows on the job who were all miners—we were cutting brush at the time until we had cleared a place for a track so we could get a spur track in to get the work started.

Q. That preliminary work of cutting brush, is that always necessary?

A. It is necessary before you can commence your tunnel operations to clear your right of way.

Q. All right. Go ahead.

A. Well, an attempt had been made on the part of Mr. Green, who had been passing out buttons that had the words "I am a member of the A. F. of L."—so, of course, all the men working on the job, that is, the large majority of us [fol. 17] were all miners and we knew that the A. F. of L. at no time had ever organized construction work, or tunnel work, or tried to better our conditions, and the majority of us at one time or another had carried cards in the International Union of Mine, Mill & Smelter Workers, the only union we ever knew of that had ever organized construction

and tunnel work. So at noon, on February 2nd, the men on the job could see that there was an attempt on the part of the United Pipe & Concrete Company to force us into the A. F. of L. in the manner in which they were doing. In the manner in which Green was handing us these orders with the company's foremen standing around and letting this happen on company time. None of us had signed any cards to the effect that we would join the A. F. of L., and Axel Carlson had never said anything to me when he hired me that I would have to join the A. F. of L. to work on that job.

Q. How many men were working on the job, including yourself?

A. I think there were 29 men.

Q. What, if anything, did the 29 do on this subject of choosing a union?

A. Well, the men got together at noon time and we talked it over amongst ourselves in groups of, I think, seven, eight or ten of us in one group, and we got to talking about whether we were willing to be forced into the A. F. of L. or whether we would have the right to join a union of our own choosing. So we decided to hold a vote that day.

[fol. 18] Q. Did the men discuss this question of union affiliation before taking a vote?

A. Yes, we did.

Q. And did you take a vote?

A. We did take a vote.

Q. When did you take that vote?

A. At noon on February 2nd.

Q. Describe how that vote was taken.

A. Well, we all came over from where we had been working across the bridge over to the camp site, and we all talked it over and mentioned the fact that there was a Wagner Act and there was no reason why we should not exercise our right under that Wagner Act and choose our own collective bargaining agency.

Q. Did you finally participate in a vote to make your choice of a union?

A. We did vote, yes.

Q. Do you know the result of that vote?

A. Yes. There were 22 men for the CIO International Mine, Mill & Smelter Workers Union, there were 5 men who didn't vote, and 2 men that carried A. F. of L. cards. One was an engineer and the other, I believe, was a truck driver.

Q. Those two voted A. F. of L.?

A. They had A. F. of L. cards at the time. They stayed A. F. of L.

Q. So the vote was 22 to 2?

A. Yes.

[fol. 19] Q. When you say 22 men voted for the CIO, that 22 represented a majority of all men working on the job at that time?

A. Yes.

Q. What particular CIO union did the men choose, if any?

A. It was the Shasta Tunnel Workers Union, Local #260, affiliated with the International Union of Mine, Mill & Smelter Workers.

Q. Had there been any discussion among the men prior to taking the vote that they would abide by the results reached by the majority?

A. Well, we felt that the Wagner Act entitled us to make that decision in reference to what organization we should have represent us at that time, and we would go along with what the majority voted.

Q. Subsequent to the taking of the vote as you have described it, did you ask, through Local #260, that the United Concrete Pipe Corporation bargain collectively with you men on the job through your representative?

A. Yes, that was done and we joined the union.

Q. Did you join the union immediately after taking the vote?

A. Well, I had a delinquent card and got reinstated.

Q. After they made their choice, did the others join the CIO and ask the CIO to bargain for them?

A. Yes, we all joined the CIO and asked Local 260 to bargain for us.

[fol. 20] Q. Was the company requested by Local 260 to bargain collectively concerning Union recognition, and conditions of employment for you men on the job?

A. Yes, that was done.

Q. With what result, if you know?

A. The company refused to bargain.

Q. With whom?

A. With Local 260, our representative.

Q. After the 2nd of February, I believe you said the job was shut down. Correct?

A. Yes.

Q. Why?

A. Due to weather conditions.

Q. It was re-opened later, was it not?

A. Yes.

Q. About a week later?

A. I believe it was a week later.

Q. Were you men called back to work?

A. No, we weren't.

Q. Subsequently the job was again shut down, that is true, isn't it, at the request of the Governor of the State?

A. I believe it was.

Q. And it remained shut until approximately the 23rd of February?

A. Yes.

[fol. 21] Q. And on the morning of the 23rd of February, the job re-opened, the day before you picketed?

A. I couldn't say what date for sure.

Q. What is your best recollection?

A. The 23rd of February, yes, that's right.

Q. And when the job re-opened on the 23rd of February, it re-opened with men belonging to the A. F. of L.?

A. Yes.

Q. And none of the men who had voted CIO and who had been working on the job at the time the vote was taken were called back to work?

A. I believe they were later sent letters and the letters said they could come back to work on the understanding that they joined the A. F. of L.

Q. On the 24th of February, then, you proceeded to go out there and picket, correct?

A. Yes.

Q. And was your picketing peaceful in all respects?

A. Absolutely. There were trucks and men going back and forth through the fence at all times and there was no attempt to stop them in any way.

Q. Do you know whether or not charges were filed against the United Pipe Concrete Corporation with the National Labor Relations Board by reason of its refusal to bargain with the representative for the majority of men?

Q. Yes, those charges were filed by myself and I believe [fol. 22] one of the officials of the union.

Q. I think I have copies of those.

(Copy given to Mr. Carr.)

Mr. Carr: We will stipulate that these copies of charges before the National Labor Relations Board may be offered in evidence on the condition that within two weeks certified copies be substituted before the Court, and, in the event they are not, they will be declared inadmissible.

Mr. Gladstein: That is perfectly satisfactory and I will undertake to obtain in lieu of the copies I now have certified copies at a later date but, in the meantime, I will ask Mr. Carlson to identify the document which I now have purporting to be a copy of the charge brought by Shasta County Local #260 against the United Concrete & Pipe Company on the 4th day of February, 1939, and I will ask you to state, Mr. Carlson, whether that is, to your best knowledge and belief, a true and correct copy of a charge on file with the Labor Board and a true and correct copy of what it purports to be.

A. It is.

Mr. Gladstein: I will offer that in evidence as defendant's Exhibit No. 1, Your Honor. May it be admitted subject to the conditions stated by the District Attorney?

The Court: The record may show that the document is admitted.

Mr. Gladstein: I now show you an amended charge dated the 11th day of February, by the same union against the [fol. 23] same company, filed before the National Labor Relations Board. I ask you to examine it and state whether it is a true and correct copy of what it purports to be.

A. It is, yes.

Mr. Gladstein: I offer it in evidence as defendant's Exhibit No. 2.

Mr. Carr: Subject to the same conditions, it may be admitted without objection.

The Court: Admitted.

Mr. Gladstein: Now, Mr. Carlson, this project, this Delta Tunnel Project, is being performed or is being worked under a contract with the United States Bureau of Reclamation?

A. To my knowledge, yes.

Q. And it involves the construction of a tunnel, is that true?

A. Two tunnels.

Q. And its purpose is to re-locate a main Southern Pacific Railroad line?

A. Yes.

Q. Is it not true, to your knowledge that the re-location of this railroad line is made necessary as a result of a project, in connection with the Central Valley Water Project in this state, to make the Sacramento River navigable clear up to the city of Redding?

A. I believe it is, yes.

Q. And there is also in connection with this a project to [fol. 24] build a Shasta Dam. All that is tied in together?

A. Yes.

Q. Now, this surface work which you and the others were performing at the time you were working on the job, is it true that this work first began on January 26th, 1939?

A. I believe it was the 26th.

Q. And it lasted until February 2nd, I think you said. Then came the vote and the shut-down of the project. Is that true?

A. Yes.

Q. Now just what did this surface work consist of? Will you describe that?

A. Well, there is usually a large amount of brush and trees that have to be cleared off of the land before they can start putting shovels in there to level it off, and we were cutting these trees and brush down so they could get shovels in there and level it off for a railroad spur.

Q. And what was the purpose——

A. They wanted to get equipment in there so we could start tunnel operations.

Q. During all of the time that you were picketing on February 24th, did you threaten anyone?

A. No.

Q. Or intimidate or coerce anyone?

A. No.

Q. Or attempt to?

A. No.

[fol. 25] Q. Did you commit any violent act?

A. No.

Q. Any disorderly act?

A. No.

Q. Any act which was not peaceful?

A. No.

Q. Did you do any shouting?
A. No.
Q. Did you make any loud of other noises?
A. No.
Q. Did you make any gesture of threat or intimidation?
A. No.
Q. Did you use any insulting or lewd or abusive language?
A. No.
Q. Did you carry any weapons?
A. No.
Q. Did you obstruct anybody who was passing along the highway?
A. No.
Q. Did you obstruct anyone who wanted to go through the picket line to the job?
A. No.
Q. Or anyone who wanted to go through the picket line from the job?
A. No.
Q. Is it not true that men went freely through the picket line to and from the job?
[fol. 26] A. Yes.
Q. Is it not true that trucks drove in and out of the project grounds in connection with which they drove through the picket line?
A. Yes.
Q. Is it not true that these trucks and men were in no way obstructed or molested?
A. That's true.
Q. Was there any violence on your part or by anyone else?
A. No.
Q. Any rioting?
A. No.
Q. And that would be true during all the time of your picketing?
A. Yes.
Q. You hoped, did you not, that by reason of your picketing, one or more of the men who were working on the job would leave it?
A. I did.
Q. You hoped that others who might be coming up to get a job and seeing your picket line would refuse to take a job?
A. Yes.

Q. You hoped that people who might be passing by would notice the picket line and come to the conclusion from the publicity given by the picket line that the Delta Tunnel Project was unfair to organized labor?

[fol. 27] A. I did.

Q. Were those your purposes in picketing?

A. They were.

Q. You also desired, I assume, to have your job back?

A. I did, and still do.

Q. Do you know whether any of the A. F. of L. men did walk off the job as a result of your picketing?

A. Well, I couldn't say for sure, but I believe that one man walked off the job as a result of the picketing.

Q. You understand that at least one of the A. F. of L. men who were working on the job, whether as a result of your picketing or not, you are not sure, but at any rate voluntarily walked off the job?

A. Yes.

Q. Did you have any intention of making use of any banners for other than publicity and persuasion purposes?

A. That was all.

Q. You had no intention of making use of them as a weapon?

A. No.

Q. Nor did you at any time use any banners for weapons?

A. No.

Q. Nor did any of the other pickets do so?

A. No.

Q. In connection with the picketing, is it true that it consisted simply of walking back and forth along the side of the paved portion of the highway?

[fol. 28] A. Yes.

Q. In picketing, you didn't go on the paved portion?

A. No.

Q. You and all the other pickets kept on the graveled portion?

A. Yes.

Q. The graveled portion is not customarily used by automobiles, and as far as you know on that particular morning of the picketing, no automobiles were using the graveled portion?

A. That is correct.

Q. In other words, the traffic passing by used the paved portion?

A. Yes.

Q. And is it correct, as Mr. Cibula testified, that you would walk a distance of 50 to 100 feet in a northerly-southerly direction, generally speaking, and turn around and repeat that procedure in the other direction?

A. Yes.

Q. Was there space between the pickets as they performed their picketing operations?

A. Yes, we were spaced apart from each other, probably six feet or more between us.

Q. At the time of the picketing, you were and had become a member of Local #260?

A. Yes.

Q. And the others who were on the picket line included [fol. 29] men who had worked with you on the job before the shut-down on February 2nd and also officials and other leaders of the union, is that correct?

A. Yes.

Q. Do you recall whether you were carrying a sign that morning?

A. I believe I carried a sign, yes.

Q. Do you remember which one?

A. I think that one about being unfair to the CIO.

Mr. Gladstein: For the purpose of the record, let us refer to Exhibit B 4.

Mr. Carr: For the People?

Mr. Gladstein: Yes. The picketing that you participated in was conducted, then, between the paved portion of the highway and the fence which surrounds or includes the project itself.

A. Yes, off the pavement.

Q. Not on private property?

A. Not on private property?

Mr. Gladstein: That is all.

Cross-examination.

Mr. Carr: Now, Mr. Carlson, you stated that on the day of February 2nd, a vote was taken and that the job was shut-down on that day by the contractor?

A. Yes.

Q. On account of the weather conditions?

A. Yes.

[fol. 30] Q. Now, where did you go immediately upon the shutting down of the job on that day?

A. Well, I couldn't say; I believe I came into town. No, I lived out there; I stayed out there; I was living at Midway Service Station.

Q. Did you stay around the job at all?

A. I lived just two miles from the job.

Q. Were you there at any other time?

A. Back on the job?

Q. At the place of the job.

A. No, we left right after noon.

Q. Did you know that the A. F. of L. sent a group of men out there after the job was shut down?

A. No, I don't believe I did.

Q. Did you know that there were a group of CIO men who went there to protest?

A. That day? No.

Q. There has been some evidence on the Central Valley Project. Would the defendant like to stipulate as to come general facts regarding that?

Mr. Gladstein: What are they?

Mr. Carr: That the Shasta Dam is a project involving an expenditure of approximately thirty-five million dollars and that it was to be constructed in Shasta County within the next five years.

Mr. Gladstein: I will stipulate to that.

[fol. 31] Mr. Carr: And that there are now being constructed, as part of that project, four tunnels on the railroad re-location and for the purpose of—do you want to identify those tunnels by name?

Mr. Gladstein: I don't think that is especially material but I have no objection if you describe for the record just what that project is.

Mr. Carr: Alright now, Mr. Carlson, you stated that the job, some time after the 2nd of February and prior to the 23rd or 24th of February, when the picketing took place, was shut down by the Governor, at least that was your information?

A. Yes, that is to the best of my knowledge.

Q. Or at the request of the Governor of California?

A. Yes, I was at a conference in Sacramento when the Executive Secretary of the Governor requested the A. F. of L. officials and the contractor (and their attorney) to shut the job down until some sort of arbitration was arrived at.

Q. Well, for what purpose? Wasn't it shut down because there was a dispute between the A. F. of L. and the CIO over the jurisdiction on that job, is that right?

A. Well, you see, the men who voted CIO never got back on our jobs, the company claimed it would only take men from the A. F. of L. But that was after we took the vote. After we voted CIO, we were not allowed to work there anymore. We were locked out of the job. Then the contractor arranged to have A. F. of L. men on the job, and [fol. 32] the Governor got the contractor to remain shut down, but the arbitration fell through. So when the contractor opened up again with different men, not letting us have our jobs, why then we put the picket line on.

Q. Do you know why the job was shut down, why it became necessary to shut the job down?

A. Well, just like I said, that's all I know.

Q. You have no knowledge as to why that was——

Mr. Gladstein (Interrupting): Wasn't that in connection with an attempt to arbitrate an agreement which had been drawn up but never agreed to? I was in those conferences and as I remember it, the purpose of having the status quo remain was so that there could be an attempt to arbitrate the matter. I cannot prove that by this witness—that the A. F. of L. claimed it had a contract which was executed on the 28th of January. However, by a subsequent witness, I will introduce that into evidence and what the dispute was about.

Mr. Carr: The only thing I want is that the defendant is familiar with the whole dispute that went on there, and I think you know, as a matter of fact, that there had been some trouble on the job prior to the conference with the Governor.

A. Well, I don't know. I wasn't in town. I was down in 'Frisco at the NLRB filing my charges.

Q. But prior to that time had there not been groups of men congregated at the Delta Tunnel job?

A. I couldn't say because I was never out there after the day we were discharged until I went on the picket line.

[fol. 33] Q. Now you stated that trucks drove through the picket line, is that right?

A. Well, I couldn't say through the picket line because we gave them plenty of room to go through. We didn't block the road in any way.

Q. But the path that your picket line followed was across the line where the trucks were going through?

A. Yes, but men and trucks both went through.

Q. Have you served in any picket line before?

A. No.

Mr. Carr: I guess that is all.

Mr. Gladstein: Just one question on these trucks that went through, or passed the picket line. I think we should have that straight in the record. There is no well-defined paved roadway from Highway No. 99 to the project, is there?

A. No. It is just a graveled dirt path.

Q. And in the walking that you did, you walked near and perhaps over and across that path?

A. Yes.

Q. As a matter of fact, there are several paths, aren't there? Several entrances by pathway to the gate that leads to the project?

A. I believe there is, yes.

Q. And is it true that at no time during any of the picketing that morning did you or anybody else in any way hold up any traffic or person who wanted to go into or leave from the project?

[fol. 34] A. That is true.

Q. They had free passage, unobstructed?

A. Yes.

Mr. Gladstein: That is all of this witness. May it be agreed by stipulation that the Carlson case will now be adjourned two weeks from now, ten o'clock, April 25th, for the putting on of further testimony by the defendant?

Mr. Carr: That is satisfactory.

The Court: The case will be recessed, then, until 10 a. m. on April 25th.

[fol. 35] Friday, April 28, 1939, 10:00 A. M.

The Court: In the case of People vs. Carlson, are you ready on both sides?

Mr. Carr: The People are ready.

Mr. Gladstein: The defendant is ready.

Mr. Carr: I think we might stipulate, if you will, that this is the time and place for the continued trial.

Mr. Gladstein: So stipulated. I will now call Mr. Weise.

JOHN WEISE, a witness produced and sworn for the defendant, testified as follows:

Mr. Gladstein: What is your true name?

A. John Weise.

Q. Will you please state where you reside?

A. Central Valley.

Q. What is your business or occupation?

A. Laborer.

Q. You are, and for some time have been a member of the International Union of Mine, Mill and Smelter Workers, is that correct?

A. Yes.

Q. And were you in January and February of 1939 associated with Local 260 of that organization?

[fol. 36] A. I was.

Q. Now, I want to refer to the exhibits of the defense, Exhibits One and Two, which were offered and admitted in evidence at the previous hearing with the understanding that there would be substituted certified copies of these exhibits. These exhibits are copies of charges filed with the National Labor Relations Board. Mr. Weise, I show you what purports to be a certified copy of a charge of unfair labor practices, entitled "An Amended Charge", and dated February 11, 1939. This document purports to be signed by you as Secretary of the Shasta Tunnel Construction Workers Union, Local 260. Please examine this document and state if it is a true and correct and certified copy of an original document signed by you.

A. Yes, it is.

Q. I offer it in evidence at this time in place of the document entitled and numbered "Defendant's Exhibit Two in Evidence". I have an extra copy for you, Mr. Carr (handing document to Mr. Carr).

Mr. Carr: No objection.

The Court: The document just referred to may be received in evidence in place of the document for which it is being substituted. It will take the same exhibit number, Defendant's Exhibit Two.

Mr. Gladstein: Now, Mr. Weise, is it correct that in January and February of this year you were the Secretary [fol. 37] of Local 260?

A. Yes.

Q. As Secretary, did you have in your custody and care certain books of the union?

A. Yes.

Q. Including membership books?

A. Yes.

Q. And written applications for membership?

A. Yes.

Q. State whether or not, about February 2, 1939, applications for membership in Local 260 were made by men employed by the United Concrete Pipe Corporation at the Delta Project job.

A. Yes, there were.

Q. Do you remember approximately how many such applications for membership were made?

A. I believe it was nineteen or twenty, in the neighborhood of nineteen.

Q. Can you state whether the number of men applying for membership at that time, that is, men who worked on the Delta Project, whether that number constituted a clear majority of all the workers employed on that particular project?

A. Yes, it was a large majority.

Q. Were these applications made in writing by the men?

A. Yes.

Q. Were they signed by the men?

[fol. 38] A. Yes.

Q. What did the signed applications provide?

A. The application was the usual form for applying for membership in the union, and also designated Local 260 as the exclusive collective bargaining agency for every man who signed the application.

Q. Pursuant to these written and signed applications and designations, did the union take any action with respect to requesting collective bargaining from the employer?

A. Yes, that was done.

Q. What action did the union take?

A. There were three representatives of the union who attempted to contact the United Concrete Pipe Company with a view toward establishing contractual relations between the corporation and the union.

Q. Who were these three representatives of the union?

A. John Walker, the Secretary of the Tunnel Construction Workers Organizing Committee; Ray Livingston, In-

ternational Executive Board member of the International; and John Morgan, International representative.

Q. State, if you know, what the Tunnel Construction Workers Organizing Committee is, and its relationship, if any, to the International union.

A. It is an organizing committee composed of unions affiliated with the International Union of Mine, Mill and Smelter Workers, and is engaged primarily in organizing [fol. 39] tunnel construction workers. The Tunnel Construction Workers Organizing Committee is subsidiary to the International Union of Mine, Mill and Smelter Workers, but is a superior organization to the individual local unions. It is comparable to a point council of local unions operating in a particular district.

Q. That is, a sort of body or medium through which various local unions situated in different localities can jointly act. Is that true?

A. Yes.

Q. Now, before the union asked the employers to negotiate a contract for the men employed on the Delta Project, was there discussion with the men with respect to demands, if any, that should be made on the employers?

A. Yes, there was a series of demands, or rather a more or less standard form of contract which was discussed.

Q. Did your proposed contract embody the desires and demands of the men on the job?

A. That is right.

Mr. Gladstein: I think that is all. You may cross-examine.

Mr. Carr: No questions.

The Court: The witness may be dismissed.

JOHN MORGAN, a witness produced and sworn for the de- [fol. 40] fendant, testified as follows:

Mr. Gladstein: What is your residence, Mr. Morgan?

A. Ramona Hotel, Sacramento.

Q. And your occupation?

A. International representative of the Mine, Mill and Smelter Workers Union.

Q. Is that an official position?

A. It is.

Q. I show you what purports to be a certified copy of an original charge of unfair labor practices filed with the National Labor Relations Board, bearing the date of February 4, 1939, brought by the Tunnel Construction Workers Organizing Committee against the United Concrete Pipe Corporation, and purporting to be signed by yourself as International representative. Please examine this document and state whether it is a true and correct copy of an original document of similar nature signed by you.

A. Yes, I signed this.

Q. Is it a true and correct copy of the original document signed by you?

A. It is.

Q. To your knowledge, was the original filed with the National Labor Relations Board, Twentieth Region, in San Francisco?

A. Yes, it was.

Q. May this document, Your Honor, which the witness [fol. 41] has just identified, take the place of Defendant's Exhibit Number One? Here is a copy for you, Mr. Carr (handing copy to Mr. Carr).

The Court: It may be admitted as Defendant's Exhibit Number One.

Mr. Gladstein: Now, Mr. Morgan, in your official position did you play any part in attempting to obtain collective bargaining from the United Concrete Pipe Corporation after a majority of its employees had voted to be represented by Local 260?

A. Yes. After the United Concrete men had signed application cards and after the vote was taken, I, along with several of the members of the union, attempted to contact Mr. Bell, who is an official, I believe the Treasurer, of the United Concrete Pipe Corporation. I talked with Mr. Bell on the telephone and he refused to meet with our committee. He refused to listen to our request altogether.

Q. What exactly did you ask Mr. Bell to do?

A. I told Mr. Bell who I was and that his employees on the job had taken a vote and the majority had selected our union as their bargaining representative. I told him that these men had signed up in our union and we wished to negotiate with him for a contract on the job. But he would not listen to us.

Q. Did he give any grounds for his refusal?

A. As I recall, he stated that the company was going [fol. 42] to deal with the American Federation of Labor and the fact that the nineteen or twenty men from the United job were signed up with the Mine, Mill and Smelter Workers Union was not going to change the situation. In the telephone conversation I made a point of telling him that the men on the job had designated the Mine, Mill and Smelter Workers Union as their collective bargaining agency and desired to have the union represent them with the company, and desired to negotiate a contract. Mr. Bell was very firm in refusing, and stated that business was going to be done with the American Federation of Labor, notwithstanding the fact that his men belonged to the Mine, Mill and Smelter Workers Union.

Q. The Mine, Mill and Smelter Workers Union is now, and during all the time that you are talking about was, affiliated with the Congress of Industrial Organizations, is not that correct?

A. Yes.

Q. So it is correct that no meeting was ever held at which negotiations took place between Local 260 for the men on the Delta job, and any representative of the Company?

A. No meeting was held with the officials of the United Concrete Pipe Corporation prior to the time that a picket line was established on the Delta Project for the first time. I don't recall the exact date but I think that it was back in February sometime, yes, February, when we established our picket line for the first time. It was then that several [fol. 43] conferences were held here in Redding in the office of Senator Carter.

Q. Now at these meetings in Senator Carter's office, did representatives of Local 260 renew their demand for collective bargaining with the company?

A. Yes, and also on many other occasions.

Q. With what results?

A. We were turned down every time.

Q. Directing your attention to February 24th, which is the day when the defendant Carlson was arrested for picketing at the Delta Tunnel Project, was there just prior to that date a meeting or several meetings of the union membership at which the question of picketing the job was discussed?

A. The question of picketing the Delta job was discussed at several union meetings and was also discussed at separate meetings of the men from the Delta job, along with certain

members of a Strategy Committee composed of union members.

Q. To refresh your recollection, it has been the testimony that the job was re-opened with American Federation of Labor men on February 23rd and that picketing began on the following day, that is, February 24th. Were you present when the question of establishing a picket line on that job was discussed, that is, just prior to the 24th?

A. I was.

Q. Where did that discussion take place?

A. At the union hall.

[fol. 44] Q. Who generally participated in the discussion?

A. The men, the union members.

Q. Was it then decided to place a picket line on the job the following morning?

A. Yes, it was decided at that time.

Q. What was the purpose of placing such a picket line on the job?

A. Well, the purpose in establishing the picket line was this. The Mine, Mill and Smelter Workers Union had been successful in organizing a majority of the men who were working on that job. These men had signed cards, C. I. O. cards, appointing the Mine, Mill and Smelter Workers Union to represent them in collective bargaining, and the company had been contacted and had refused to give our union any consideration as far as our right to be recognized as the bargaining agency was concerned. In view of this fact and the further fact that the company re-opened the job and put other men to work at the time the vote was taken, it was the intention of the union to establish a peaceful picket line on the Delta project, and the purpose of the picket line was this. A two-fold purpose. First, by means of a peaceful picket line to advertise and show to the men that the company had put to work on the job and who were therefore in a position of being strike-breakers, to advertise to them the fact that the job was unfair, and endeavoring in this manner to peacefully persuade these men not to work on that job. And the second purpose was to advertise the [fol. 45] conditions of this particular job to the public at large, to the American Federation of Labor people in general throughout the community, to the citizens generally of Shasta County, and in fact to the people of California generally, and specifically to the State Administration. Now, I might also add that the union itself was not in

a very good financial state and it was forced naturally to take the traditional step of peaceful picketing to advertise the job as unfair. We were not in any position to run ads in the newspapers or take any other expensive means of publicizing our case, and we felt that if we established a peaceful picket line out there on the job, why then the tunnel miners, the construction stiffs, would not go through a peaceful picket line. We felt that they would not want to work on a job that was unfair due to the fact that the tunnel men in general have always been in favor of organized labor. We also felt that if the people of Redding and the people of Shasta County and of the state generally recognized the state of affairs in connection with this job, why then some justice would be done, some action would be forthcoming from the State Administration to rectify the injustice that had been done to the men who were locked out on the sole ground that they had freely chosen their own collective bargaining representative, which the employer did not happen to like.

Q. Has it been your experience in the trade union movement, and as far as you know, the experience of others, [fol. 46] that there are many working men who will not take a job if they know it has been declared unfair to organized labor, that is, if they know that a union affiliated with organized labor has declared the job to be unfair?

A. Yes, that has been my experience and I know that it has been the experience of most people in the trade union movement. In this particular situation, the picketing was based on the fact that the contractor attempted to work the job with strike-breakers. If the contractor had not attempted to use strike-breakers, but had closed down the job and allowed it to remain closed, then of course there would possibly be no reason to establish a picket line out there. Inasmuch as the contractor did work the job, did use strike-breakers, then it became necessary for the union to take the necessary steps of advertising the state of the job to the men who were working there and likewise for the purpose of informing men who might be coming there to go to work and who would not know the conditions on the job unless they were apprised through the picket line.

Q. Has it been your experience, Mr. Morgan, as a union official, and to your knowledge the experience of others in the trade union movement, that there are many men who will not intentionally accept work if they know that the

work offered them has been pronounced unfair to organized labor?

A. Yes. I would say very much so.

Q. Was it partly, at least, the purpose of the picket line [fol. 47] to apprise such men, if any there might be, so that they would not take the jobs that were offered them?

A. Yes, that was one of the purposes of the picket line, to show men who might be coming to the job that it was an unfair job, and also for the purpose of persuading men who were already working on the job not to work it.

Q. Have you had contact with large sections of workers in the trade union movement?

A. Yes, I have had very extensive contact over a considerable period of time and it has been my experience that if you have a job which is on strike or where a lockout is in progress and the employer is attempting to work the job, if you do not have a peaceful picket line there, then the chances are greatly enhanced of men going and accepting jobs who would not work the job if a picket line was established there as a means of demonstrating to them that the job is unfair.

Q. Do I understand you to say that such men accept the job simply because they lack knowledge of the fact that the job has been pronounced unfair?

A. Yes, that is exactly the point. Unless a picket line is established on the job the union generally has no practical method of letting potential workers know the true conditions, and therefore when there is no picket line on the job many men go to work without knowing what the conditions happen to be. These same men, many of them, if they saw a picket line there, would not want to accept the job. [fol. 48] Q. Based on your experience, would you say that these men who will not go through a picket line when they see one, react in that manner because of fear for their safety or because they prefer trade unionism and the principles of trade unionism?

A. I don't think they react that way from fear at all where a picket line has been established. In general, I think that the working man is very definitely in favor of organized labor. There are certain exceptions, no doubt, but in general, they are in favor of organized labor and if the matter of an unfair job is brought sharply to their attention by a picket line, then the probabilities are that

many, many working men simply will not want to go through the picket line. It is simply a case of one worker not wanting to scab on a fellow worker, because he realizes that it would amount practically to stealing the bread out of another worker's mouth.

Q. In other words, the man who sees a picket line, feels a basic kinship with the men on the picket line, and this kinship is brought out by the picket line, is that correct?

A. Yes.

Q. Now, you say that one of the purposes of your picket line on February 24th was to acquaint the public with the fact that a labor dispute was in existence. Drawing on your own experience, Mr. Morgan, would you say that where labor disputes occur, as in this case, that many of [fol. 49] the outside general public do not know of the existence of the dispute, or if they do happen to know that a dispute exists, they do not know the issues? Would you say that is the case?

A. Yes, unfortunately, that is very true.

Q. What has been your experience in that connection?

A. In a general way it has been the experience of probably all trade union leaders, it has certainly been my experience and that of many others I know, that one of the hardest problems a union has to face is to acquaint the public generally with the issues of a particular dispute. For example, in this particular United Concrete job, we felt it extremely necessary to place the case before the public if we were going to be successful in winning the rights of the union men concerned, and to do this we felt that one of the most necessary steps to take was the establishment of this peaceful picket line, for in this way the story would be brought home to the people generally.

Q. To your knowledge, did the contractor in this particular case give his side of the dispute through the newspaper columns and elsewhere to the public?

A. Yes, to a certain degree he did.

Q. Has it been your experience generally in cases of labor disputes that employers make use of the advertising columns of the newspapers and other types of propaganda to give their side of the controversy?

A. I know in general that this has been the case to a [fol. 50] large degree. It has been true of many disputes in the San Francisco Bay area where the employers have made very widespread use of the advertising columns of

newspapers and also of radio time. And unfortunately the unions have not been able to take the same action with either newspapers or radio but have in general been forced to resort to other and less expensive means.

Q. Such as what?

A. Placards and picket lines, mostly.

Q. In the last analysis, then, would you say as a general rule that the use of cardboard placards and peaceful picket lines constitute about the only practical methods whereby a union can meet the publicity, often high-powered, of the employers?

A. Yes, I would say that placards, picket lines, and distribution of handbills are the only practical methods open to the unions, and the most fundamental and most practical is the picket line, because this not only serves to notify the public at large but also is the only practical method of notifying men who otherwise might become strike-breakers.

Q. Was that substantially the situation in the United Concrete dispute, that is, with respect to the methods of publicity which, from a practical point of view, were open to the union?

A. Yes, it was.

Q. You say that one of the reasons that unions want to [fol. 51] picket and one of the reasons that you in this particular case wanted to picket, is that you want the public to be acquainted with the facts. Is it considered by organized labor today that public opinion is important in influencing the outcome of labor disputes?

A. Yes. It is considered to be a problem of the utmost importance, and in our particular situation unquestionably it was. As a matter of fact, I would say that not only is it important to win over the opinion and sympathy of the working man generally, but also the opinion and sympathy of the businessman and the general citizenry in the county. We know from experience that where unions are unable to impress the justice of their case on the community at large, and in some cases where employers have whipped up hysteria through falsifying the issues, that union men have been very badly treated through the formation of so-called citizens' groups and back-to-work movements, and even in some case vigilante movements. In the United Concrete situation we felt that public opinion was a very important factor on the question of whether or not we would win.

Q. Now, on the question of strike-breakers or potential strike-breakers. I think you said that one of the reasons you wanted to advertise your side of the case by a peaceful picket line was to influence such a group through logic and reason. Is that correct?

A. That is correct.

[fol. 52] Q. To achieve the objective of their not going through the picket line?

A. Yes. We know that in many cases strike-breakers are brought in from outside areas and in other cases local people are brought into the controversy, and although there is a certain class, a certain minor class who are professional strike-breakers and are so used through ignorance of the true situation usually, although the professional strike-breakers are not usually subject to peaceful persuasion, still where the case is not one of professional thugs and strike-breakers at all but on the contrary local people or outside people who have been brought in through advertising but who would not want to scab on workers, a certain percentage of such people would definitely refuse to take on strike-breaking activities if a picket line was on the job.

Q. What has been your experience, Mr. Morgan, as to whether a close relationship exists between the employer who will use strike-breakers and the employer who refuses to bargain collectively with the chosen representatives of his workers.

Mr. Carr: Object on the grounds it calls for the conclusion of the witness.

Mr. Gladstein: It is asking for his experience.

Mr. Carr: We have been allowing him to state his opinions and conclusions on a lot of these things. While I don't think a lot of it matters, he has nevertheless stated his opin-

[fol. 53] ions and conclusions. Probably some of it is true, but here is a question I don't think anybody will be expert enough to be able to give a correct conclusion on. That is a matter of great dispute.

Mr. Gladstein: Well, is it not true that in the particular case of the Delta job the contractor both refused to bargain collectively and attempted to use strike-breakers?

A. Yes, he refused to bargain with the men, or rather with the duly chosen representatives of the men, and he also went ahead and worked the job with what we considered to be strike-breakers.

Q. Now you stated that one of the reasons you decided to picket was that that was the only practical method within your means of publicizing your side of the case. Was consideration given to the factor that being on a picket line tends to stimulate and maintain the morale of the locked-out workers during the course of the labor dispute?

A. There is nothing that kills a strike so quickly as inactivity or lack of planning in connection with a strike, and the fact that the men on strike or who have been locked out are actually out there on the grounds, part of a peaceful picket line, and actively engaged in presenting their case to the public and to the men who are working on the job, serves as a very great stimulant to the morale of the union. As a matter of fact without that kind of stimulant, why any union is under a serious handicap.

[fol. 54] Q. In other words, it is a matter of keeping up the spirit of the men themselves and of activizing the men so that they individually and personally carry on their struggles instead of taking the dictates of somebody higher up. Is that correct?

A. That is right. I might even say that activity on the picket line for union men is one of the most important ways by which democracy is carried out in practice, because the men are naturally taught by this kind of experience to be self-reliant and to actively participate in the carrying on of their own struggle, participating in making their own decisions on matters of policy, and so on.

Q. In determining to place a picket line on the job, Mr. Morgan, did you give consideration to the fact that men on the picket line in broad daylight where they can be seen clearly by anyone, including peace officers, are less likely to commit acts of violence?

A. I believe from experience that men on a peaceful picket line, particularly in the circumstances that were prevailing on the Delta job, are less inclined to violence than if there is no picket line, or rather if the men are prevented from establishing a peaceful picket line. You see, in a strained situation of this type——

Q. (Interruptin-). Did you say strained?

A. Yes, strained. In a strained situation of this type, if there is no picket line, the men are loose, they are left to [fol. 55] themselves as individuals, without any direction, more or less free to do what they feel, and naturally the chances of violence, individual violence, are increased. On

the other hand, if they are on a picket line, acting collectively, where each individual bears a certain amount of responsibility to the rest of the group not to break discipline, and where they are under the control of picket captains who have been chosen by the men themselves and therefore have the respect of the men, then the possibility of violence on the picket line is absolutely minimized so that there is very little chance of its occurrence.

Q. Now this testimony that you have just given was intended primarily, I take it, to apply to the labor dispute at the Delta Project?

A. Yes.

Q. Would you say that these points which you have just brought out relative to the Delta dispute are typical of labor disputes generally, or is it otherwise?

A. I would say that the things I have described and the fundamental factors which have been brought out concerning this particular case are absolutely typical of the general labor dispute.

Q. To what extent would you say that the concurrence of the use of strike-breakers and the refusal to bargain collectively, as in this case, was typical?

A. Here we had a case where a contractor refused to [fol. 56] recognize the bargaining agent designated by the majority of the men, he simply refused to listen to their demands, and further than that, he went ahead and worked the job with strike-breakers. I would say from experience that this is a very usual situation with employers who refuse to accept the process of collective bargaining. This kind of case has undoubtedly been duplicated many hundreds and even thousands of times. The kind of employer who refuses to recognize a union is usually the one who will bring in strike-breakers, and of course the only effective answer on the part of the workers when an employer resorts to this kind of procedure is to establish a picket line.

Q. Getting back for a minute to the question of those instances where violence does occur on the picket line or near a picket line or in connection with it. As far as the union is concerned, does it attempt to prevent violence or is its attitude on the subject passive?

A. The union does attempt to prevent violence, in fact it generally takes very great precautions in order to maintain peace and order on the picket line. We know from experience that the public will turn against us very sharply if

our picket lines are not peacefully conducted. For this reason we are most careful to prevent provocateurs which may have been sent into the union by the employer from trying to stampede the men on the picket line into violent conduct. Now, I might say in connection with the Delta job, that very [fol. 57] strict and very efficient precautions were taken to insure that this would be a peaceful picket line.

Q. What were these precautions?

A. First, we told the men very emphatically, the men who volunteered to do picket duty, that there was to be absolutely no violence, no abusive language, no intimidation, in fact that they were to use only the legal and peaceful means which are allowed. We also saw to it that this actually was the way the picketing was conducted on the morning of February 24th on the Delta job.

Q. Is it sometimes the practice of unions to subject men to search before they go on the picket line in order to make certain that no weapons will be carried?

A. That is correct, that is done. In the Delta case none of our men had any weapons, every single individual was cautioned against carrying or using any weapon and all of the men were very emphatically counseled on their rights and what their procedure and conduct should be.

Q. Now if a picket line is established and succeeds in achieving the purposes which you have mentioned; if, for example, in this particular case you had been permitted to maintain your picket line and had thereby succeeded in winning the sympathy of the general public and in persuading some of the men on the job, for example some of the key employees, that they were acting as strike-breakers and should leave their jobs; and if as a result of these things, [fol. 58] some of the strike-breakers actually did leave their jobs, what would be the effect with regard to obtaining collective bargaining from the employer?

A. The effect would be that we would probably, the men rather, would probably be successful in being recognized by the contractor. The economic pressure on him due to the fact that his job was crippled would force him to recognize the bargaining agency of his employees, and he would undoubtedly sit down with us and negotiate a contract for wages, hours and conditions. On the other hand, as long as the men are now allowed to have a peaceful picket line, they are not able to persuade the workers to leave the jobs, with the result that there is no pressure exerted on the contrac-

tor and the chances of being able to be recognized by the contractor and to negotiate a collective bargaining agreement are reduced to practically nil.

Q. Speaking again for an instant of the question of taking the precautions which you have mentioned to insure that violence will not occur on the picket line. You mentioned that when a labor dispute is in progress it is generally a period of some strain and stress. Is that correct?

A. Yes.

Q. And there are pretty strong emotions involved on the part of the men, is that true?

A. That is true.

Q. Can you tell us in general what these emotions are [fol. 59] and by what they are caused?

A. The men feel that they are engaged in a fight for their jobs. Here is a job which they had obtained, they had been working at it, and through no fault of their own, but exclusively through the fault of the employer, these jobs have been taken away from them, in fact the men feel that the jobs have been stolen from them and therefore they very naturally feel a certain amount of anger and certain definite hard feelings are aroused.

Q. Referring to the men locked out on the Delta job, were any of them married men?

A. Yes.

Q. Married or single, do you know whether they had to rely upon their jobs for practically their entire income?

A. That is true. As a matter of fact most of those men were forced to go on relief when they could not get their jobs back.

Q. Is this matter of the strong emotional reaction of the men who feel that their livelihood has been unfairly taken away from them, is that matter considered by the union in determining whether to put on a picket line?

A. Yes. As I see it, the union uses good psychology when it realizes that those factors exist, and the union feels that the best safeguard that it can take against violence is to give the men an opportunity to express themselves and their arguments in a peaceful way.

[fol. 60] Mr. Gladstein: I think that is all.

Cross-examination:

Mr. Carr: Mr. Morgan, you stated that nothing will kill a strike faster than inactivity and then later you stated that

all of your statements given under direct examination were particularly true of the Delta controversy out of which this particular picketing arose. Now is it true that that fact was borne out in the Delta controversy; that when the picketing did stop on the Delta job after a number of criminal indictments were returned against members of the union, that the cause of Local 260 in the Delta controversy was more or less lost as far as any public interest in the jobs being taken away from the C.I.O. men, as you say, goes?

A. Yes. I believe, Mr. Carr, that the failure of the Mine, Mill and Smelter Workers, Local 260, to maintain a peaceful picket line on the Delta job was responsible for our failure to win recognition from the company, and definitely resulted in our losing the entire dispute. Very definitely that is true.

Q. Now, you yourself were indicted, were you not—I think I will strike that. Is it not true that the picketing was stopped by agreement between the union and the law enforcement agencies of Shasta County after a number of the union members had been indicted for a conspiracy to violate the ordinance in question?

[fol. 61] A. I would have to answer yes on secondhand information, Mr. Carr. I was not a party to the agreement, but I understand that such was the case. In any event when the county authorities indicted the union leaders for a felony, that is, conspiracy to violate the anti-picketing ordinance, why then it became impossible to continue the picket line because we could not ask the workers to subject themselves to being charged with a felony, which carries a penitentiary sentence on conviction, and therefore we were obliged to give up picketing altogether. And this was directly the cause of our losing the dispute with the employer, this fact of not being able to maintain the economic pressure on the employer which results from maintaining a peaceful picket line.

Q. You stated also that picketing is the only means that the unions have of meeting the high-powered publicity of certain employers in putting their cause before the public. Did you not?

A. I believe it is the fundamental and most effective method and usually as a practical thing the only method available to a union.

Q. On this particular Delta job, was any publicity of any kind given by the contractors or disseminated in any way by the contractors to your knowledge?

A. I will have to answer that in possibly an inaccurate manner. All I can say is that quite a few stories appeared in the newspapers, and it seems probable that they came [fol. 62] from company sources, that is, from the employer's sources. I can only draw that conclusion from the type of article in question. I haven't any proof that the contractor himself put out any publicity of that sort. I can only draw a conclusion from the contents of the articles that the press carried. Of course, some of the newspaper stories also carried the union side of the dispute.

Q. Now you say that there was publicity in the newspapers giving the union side of the case. Then it's true that the unions have an opportunity to publicize their cause through the newspapers?

A. Yes, the union does have the possibility of publicizing its case in the newspapers and through circulars, but the extent of coverage depends upon the viewpoint of the newspapers, and generally speaking, the newspaper publishers are more closely identified and allied with employers in these disputes and naturally this is reflected in editorials and news columns in the papers. I would like to say that I believe it is inherent in the right of the union, in connection with publicity, to effectually cripple and hamper the employers through the effective use of the picket line. This is a legal right and one which is and should be used by the unions.

Mr. Carr: Move to strike the last part about its being a legal right. That is a conclusion of law.

Mr. Gladstein: The expression "legal right" may go out. I will stipulate to that.

[fol. 63] Mr. Carr: It is true, is it not, that the unions also can and do hire halls and hold public meetings, meetings open to the public, and put forth their causes to the public?

A. Yes, but whether or not a union is able to hire a hall depends on a variety of factors, one of which is always the question of finances and usually that is a very serious problem to a union, especially if it is engaged in a labor dispute because precisely at that time is when the union is not receiving any income from its non-working members. An-

other factor is the type of community involved. In some communities it has been found impossible for a union to hire a hall. In other communities they experience little or no trouble.

Q. They do, however, have the opportunity to hold public meetings in some place in most every community?

A. For instance, in connection with Redding here, this particular dispute, I might say that no public hall was available in the city of Redding that the union could use, none whatsoever.

Q. Now, is it not true that the unions also can and do use the radio for publicity?

A. Yes. It is possible for unions to use the radio if they have the money but in most cases they do not.

Q. Now, you have spoken on a number of occasions of a peaceful picket line. How do you distinguish a peaceful picket line from any other?

[fol. 64] A. A peaceful picket line, I would say, is characterized by the following. I would say it is a group of men, not necessarily restricted to any particular number of men, but a group of men who are parading in front of a place of employment and usually carrying placards, advertising the facts in relation to the job and the dispute there, and who sometimes speak out with slogans or make known certain facts in regard to the job, without using abusive language of any sort, and without any physical or actual intimidation used against anyone.

Mr. Carr: That is all.

Redirect examination:

Mr. Gladstein: One or two questions. You mentioned that you considered it a matter of right and necessity for employees involved in a labor dispute to hamper and, I think you said, cripple an employer. In what sense did you use that terminology?

A. I meant in the economic sense, not the physical sense. I meant that an employer, if he was able to continue operating his job unhampered by any economic pressure put on by the union, would of course probably pay no attention to the demands of his men. But if through the use of effective peaceful picketing the job is hampered and the employer's supply of labor is cut off, or at least crippled, then to just that degree the union is successful in putting pressure on

[fol. 65] the employer and in bringing him around to dealing with the men.

Q. And thereby commanding collective bargaining?

A. That is right.

Q. Is it true that many men, whether they belong to the particular union or not, whether they are picketing or not, will respect the picket line and will not go through it or carry any products through it?

A. It has been my experience that men will not go through a picket line, especially men who are members of one labor organization or another, who have had any experience with labor disputes. They do not desire to have that stigma placed on them of crossing a picket line.

Q. In that way, I take it, the men on the picket line are successful through the medium of the picket line in dissuading teamsters, let us say, transportation workers of one sort or another, from bringing products to the job. Is that true?

A. That is correct. In fact, that is one of the most important purposes of a picket line, the fact that most teamsters and truck drivers are members of organized labor and will not knowingly pass through a picket line, and this has the necessary effect of cutting off the delivery of necessary supplies to the employer.

Q. I take it, Mr. Morgan, that fundamentally the men on the picket line want their jobs back, isn't that so?

A. Yes, the job is the thing the men want back.

[fol. 66] Q. And the winning or losing of the job will actually be decided at the very scene of the job, is that true?

A. That is true. Union men know that not everybody reads the newspapers, and especially many workers and potential strike-breakers would not know because they do not read the papers, what the particular facts on the job happen to be. Sometimes employers will offer heavy inducements to men to come from another locality and take over the jobs of the locked-out workers and in these instances the men who are brought in from outside would not know of the situation even if the local press had been carrying stories on it.

Q. Do you make that statement from your actual experience in these matters?

A. Yes, I know that has occurred on numerous occasions.

Mr. Gladstein: That is all.

Recross-examination:

Mr. Span: As a matter of fact there was no dispute on the Delta job as to hours of labor, the amount of pay, or the working conditions, was there?

A. Yes, there was. The primary matter at issue was the question of recognition of the collective bargaining agency of the men, but following through from that was the question of wages, hours and conditions, which was a very pertinent part of the entire controversy.

Q. I am asking as to the particular case—the matter of [fol. 67] wages was not in dispute, was it?

A. I can only answer that in this way—we attempted to obtain a contract with the contractor but never actually got to the point of discussing wages, he would not give us that opportunity.

Q. I ask that you answer the question yes or no.

Mr. Gladstein: He is trying to.

A. Here are the facts. We drew up a wage contract, that is, roughly, and we attempted to tender this to the contractor. We were not successful in doing this. This contract contained our demands for minimum wages and also maximum hours and provided for specific conditions. But as I said before, we were not successful because the contractor would not discuss this contract with us. Does that answer the question?

Q. No it does not. May I re-state it by asking if it is not true that the scale of wages for each class of employees on this particular Delta job was set, whether it did not conform to the union scale?

A. No, the scale that the contractor was paying was the minimum scale of wages set by the United States Department of Labor, which is true of every piece of work connected with the government. It was not the same as the union scale. Under the arrangement with the government, the contractor is free to pay whatever scale he desires or can be persuaded to pay, so long as he does not go below [fol. 68] the established minimum, that is, established by the government. The question of wages was very definitely a part of the controversy.

Q. To what extent was the question of wages a part of the controversy?

A. Well, to the same extent that it would be in any such matter. The men naturally wanted to establish a wage scale higher than the one they had.

Q. As a matter of fact, Mr. Morgan, the only way that wages was involved in the controversy was whether the members of your union would receive those wages, or whether the members of some other union would receive those wages.

A. That is not correct.

Q. The matter of hours of labor was not in controversy?

A. Yes, it was. In the same way that wages was.

Q. To what extent?

A. In general the question of hours in tunnel work is not a point of issue as far as the contract is concerned. It is fairly well established. However, the question of hours does come up, and the manner in which it comes up is in the question of lunch time, smoking time, things like that. In other words, the question of an employer trying to chisel on the hours even though the contract provisions are satisfactory.

Q. Were the conditions of labor, the working conditions, in controversy?

[fol. 69] A. Yes. The working conditions were in controversy.

Q. To what extent?

A. To the same extent that they would be on any tunnel construction job.

Q. Do you mean to say that the cause of the difficulty on the Delta job was a controversy over hours of labor, the wage scale, and working conditions?

A. No, I mean to say that the fundamental issue at stake on the Delta job was the question of recognizing the union, the union that represented the men as their collective bargaining agency, and secondly, the question of wages, hours, and conditions as they would come up for discussion and settlement between the collective bargaining agency and the employer. We never got to the second stage because the employer would not sit down and discuss anything with us.

Q. Was the matter of wages, hours and conditions ever actually brought in as a part of the controversy on the Delta job?

A. Yes.

Q. How was it?

A. At union meetings and at many meetings of the men from the Delta job.

Q. As a matter of fact, Mr. Morgan, wasn't that dispute on the Delta job primarily a question of whether members of your union would receive the privilege of working or whether that right to work on the Delta job would go to [fol. 70] others?

A. I have already testified that the primary issue at stake was the right of the Mine, Mill and Smelter Workers Union to be recognized as the collective bargaining agency of the men, and the second issue was the question of wages, hours, and conditions of work to be provided for in a written contract, a contract negotiated between the union and the company.

Q. What were the members of your union ultimately desiring to do, to return to their employment on the job, were they not?

A. I don't understand.

Q. Were not the members of your union, that is the twenty or twenty-two men that were dismissed as the record shows, were not they picketing for the purpose of having the United Concrete Pipe Corporation hire them back and recognize them and the local Union 260 as the bargaining agent for all employees on the United Concrete job.

A. Yes. Local 260 and the men who were picketing, as I stated, did this for the purpose of first obtaining recognition of their union to represent them, and second and pursuant to this, negotiating a contract for wages, hours, and conditions, at which time these men would return to work with union recognition and under union wages, union hours and union conditions.

Mr. Span: That is all.

[fol. 71] Redirect examination:

Mr. Gladstein: Mr. Morgan, the usual form of contract, which I think you mentioned in your testimony that your union attempted to obtain from the employer, contains a provision for an adjustment of grievances, does it not?

A. Yes.

Q. Is that an important feature of a collective bargaining agreement?

A. Very decidedly. An agreement which does not set up some means by which the workers on the job can take up

their grievances or disputes, or "beefs", as the men call them, does not accomplish very much. We know from experience that the problems between the employer and the union are never entirely settled just by the signing of an agreement. There are many things that come up during the life of the agreement which can act as very sore spots and might lead to strikes or other kinds of action, and naturally a proper and complete agreement takes this factor into consideration and provides in advance for a machinery by which grievances can be satisfactorily settled. All bona fide contracts have a grievance clause of this kind.

Q. These differences to which you refer, these disputes that arise from time to time under an agreement, do they relate to the question of hours?

A. They may be with respect to hours, wages, or working conditions. It may be that the contract does not conclu-
[fol. 72] sively cover every point. Usually, in fact, that is true, because it is not possible to foresee all of these things in advance. Therefore the board of adjustment or the grievance committee is provided for in order to take up these questions when they arise and get a decision on them. These questions may be of a large variety. It may be that the employer is infringing on the contract. He may be working his men longer than he should. Or perhaps he is not giving them sufficient lunch time. Sometimes in the matter of promotions or lay-offs the employer violates the seniority clause in the contract. All sorts of questions of this kind arise from time to time. These matters have to be taken up and adjusted through the grievance committee or the arbitration board.

Q. Are such grievances usual?

A. Well, of course it varies, depending on the employer, but it can be said as a general rule that they come up all the time. For example, an employer may be taking a man who receives a lower class of pay and place him on a more skillful and a more difficult job which entitles him to a higher rate of pay but the man does not always get paid the higher rate. That is a very frequent grievance in construction work, tunnel work like the Delta project.

Q. Now, when a union is bargaining with an employer and requests that the contract provide for such a grievance adjustment machinery, and the employer refuses, what would you say the nature of such a disagreement with the employer is?

[fol. 73] A. That is very clearly a dispute on conditions, conditions in general, which includes wages and hours.

Q. And if an employer refuses to bargain collectively altogether, what is the nature of the dispute?

A. The same. Obviously an employer who will not even discuss an agreement at all automatically bars discussion of grievance adjustments, and so I think it is definitely true in such a case that the employer's refusal makes the entire dispute one of hours, wages, and conditions of work.

Mr. Gladstein: I think that is all. Do you have any further questions, Mr. Carr? Have you, Mr. Span?

Mr. Carr: No. We have no further questions.

Mr. Gladstein: May I recall Mr. Weise for one or two more questions, Your Honor?

The Court: You may.

JOHN WEISE recalled as a witness for the defense, testified as follows:

Mr. Gladstein: Mr. Weise, testimony has been offered that one of the purpose of the peaceful picketing that took place in this case on February 24, 1939, was to persuade, if possible, men on the job to leave their job, to refuse to work behind a picket line. Do you know of any instance occurring on February 24th of any worker or workers actually working on that Delta job, leaving it because of the fact that a peaceful picket line had been established?

[fol. 74] A. February 24th, is that the day in question?

Q. Yes.

A. Yes, I know of one in particular, I know his name, and I also know of another but I do not know his name.

Q. How did you learn about these two instances?

A. One of them came to me personally, came to the union hall that very afternoon and told me that he had been working on the job but when the pickets arrived he threw down his tools and refused to work behind the picket line. The other came up to one of the picket captains, I have forgotten who he was, but subsequently I talked with him also.

Q. Now, these men, let me understand this correctly, was one of them already working on the job at the time the pickets arrived?

A. Yes, that is what I understand, he had already been working there that morning and when the pickets arrived

later on in the morning this man quit his job on seeing the picketing.

Q. Now, the other man, the one who subsequently talked with you, had he also been working on the job at the time the picketing began?

A. No, the other man was going to the job, he was looking for work there, and when he arrived at the project the picket line was already established and this man refused to go through it and decided he would not try to get work there.

Mr. Gladstein: That is all. The defendant rests.

[fol. 75] Mr. Carr: We have no rebuttal.

RENEWAL OF MOTIONS TO DISMISS

Mr. Gladstein: Now at this time, Your Honor, I would like to renew my previous motion to dismiss. There was a motion to dismiss this case which was filed prior to the plea, filed at the very first opportunity and before any evidence was offered. That was denied. Another similar motion to dismiss, but amplified somewhat, was filed at the conclusion of the People's case, and as Your Honor will remember, that motion was also denied. I now wish to renew both of those motions and also to add additional grounds for the present motion to dismiss; and I herewith file my motion in writing. In this motion I wish to urge all of the grounds contained in the motions heretofore made and also additional grounds which are specifically set forth in this motion. I hereby serve a copy of this motion upon the District Attorney (handing document to Mr. Carr). As these matters have been more or less argued before I will not take up the time of the court to repeat the arguments previously made.

Mr. Carr: We would like to submit to the ruling of the court on this motion, and we state again that we believe the evidence is sufficient to sustain a conviction and that the question of law relating to the constitutionality on which most of the motion is based has been decided as far as this court is concerned, or at least sufficient authority for this court to deny the motion exists in the ruling of the Superior Court of this county in the case of People vs. Gladstein, or [fol. 76] rather Ex parte Gladstein, in which the Superior Court sustained the constitutionality of this anti-picketing ordinance. I therefore ask this court to deny the motion.

The Court: The motion is denied.

Mr. Carr: Will you waive time for passing sentence on the judgment?

Mr. Gladstein: I haven't heard the judgment yet.

Mr. Carr: Is Mr. Carlson here at the present time?

Mr. Gladstein: No, he is not in the room, but under the Code his appearance can be waived, and I am willing to stipulate to such a waiver. As far as the defendant is concerned, judgment can now be rendered.

JUDGMENT

The Court: The court finds that John Carlson is guilty of violating the Shasta County Anti-Picketing Law.

Mr. Gladstein: Then at this time, Your Honor, I wish to file a motion in arrest of judgment. Here is the original and here is a copy for you, Mr. Carr. I wish the record to show that I now move the court to arrest the judgment which it has just made upon the grounds set forth in the motion just filed.

Mr. Carr: We request that this motion be denied.

The Court: The motion to arrest judgment is denied.

Mr. Carr: Will you waive time for sentence, Mr. Gladstein?

Mr. Gladstein: Yes.

The Court: Are you ready for sentence to be imposed?

[fol. 77] Mr. Gladstein: Yes.

The Court: The court will fine John Carlson twenty-five dollars or twelve days in jail in lieu of the fine.

Mr. Gladstein: I hereby give oral notice of appeal, Your Honor, and I will file within the time required by law a written notice of appeal. In view of the appeal which is being taken, may the sentence just pronounced by Your Honor be stayed until this matter is determined on appeal?

Mr. Carr: It is satisfactory to us, we have no objection if the court wants to make such a ruling, that the sentence be stayed pending the determination of the appeal.

The Court: Yes, that will be the order. A fine of twenty-five dollars or twelve days in jail, and the sentence will be held up while the case is on appeal.

[fols. 78-79] Reporters' Certificates to foregoing transcript omitted in printing.

[fol. 80] CERTIFICATE OF JUSTICE

I, Marie C. Mahon, Justice of the Peace of the Justice's Court of Township Number Nine, County of Shasta, State of California, hereby certify that the foregoing transcript is a full, true, correct and fair transcript of the proceedings had at the trial, the testimony offered or taken, evidence offered or received, words and statements of the court, also objections and exceptions of counsel and matters to which the same related, the proceedings had at the times the defendant made his various motions therein to be found, together with the rulings and comments of the court thereon, and also the proceedings at the time the defendant took his appeal, in the case entitled "The People of the State of California vs. John Carlson", tried by me on the 11th day of April, 1939 and on the 28th day of April, 1939.

I further certify that none of the parties to this action, or anyone else, has in any manner made any objections or taken exception to the correctness of said transcript as it now stands.

I further certify that no objection has been made by anyone within ten days or within the time allowed by law or at all to the within transcription of the notes of the reporters taken at the trial of the said case.

Dated: May 31, 1939.

Marie C. Mahon, Justice of the Peace.

[fol. 81] County Clerk's Office

STATE OF CALIFORNIA,
County of Shasta, ss:

I, Errol A. Yank, County Clerk of the County of Shasta, and ex-officio Clerk of the Superior Court thereof, do hereby certify the foregoing to be a full and correct copy of the Anti-Picketing Ordinance passed on the 4th day of April, 1938, by the Board of Supervisors of Shasta County, State of California now on file and of record in my office.

Witness my hand and seal of said Court, this 11th day of April, 1939.

Errol A. Yank, Clerk, by Ruth A. Presleigh, Deputy,
(Seal Superior Court, Shasta County.)

(Here follow 5 photolithographs, side folios 82-86)

EXHIBIT "A"

Anti-Picketing Ordinance

AN ORDINANCE PROHIBITING LOITERING, PICKETING, CARRYING OR DISPLAYING BANNERS, BADGES, SIGNS OR TRANSPARENCIES, OR SPEAKING IN PUBLIC STREETS, SIDEWALKS, ALLEYS OR OTHER PUBLIC PLACES IN A LOUD OR UNUSUAL TONE, FOR CERTAIN PURPOSES THEREIN NAMED, AND PROVIDING A PENALTY FOR ANY VIOLATION THEREOF

THE BOARD OF SUPERVISORS OF THE COUNTY OF SHASTA, STATE OF CALIFORNIA, DO ORDAIN AS FOLLOWS:

Section 1. It shall be unlawful for any person, in or upon any public street, highway, sidewalk, alley or public place in the County of Shasta, State of California, to make any loud or unusual noise, or to speak in a loud or unusual tone, or to cry out or proclaim, for the purposes of inducing or influencing, or attempting to induce or influence, any person to refrain from entering any works or factory or any places of business or employment, or for the purpose of inducing or influencing, or attempting to induce or influence any person to refrain from purchasing or using any goods, wares, merchandise or other article or articles, or for the purpose of inducing or influencing or attempting to induce or influence any person to refrain from doing or performing any service or labor in any works, factory, place of business or employment, or for the purpose of intimidating, threatening or coercing, or attempting to intimidate, threaten or coerce, any person who is performing, seeking or obtaining service or labor in any works, factory, place of business or employment.

Section 2. It shall be unlawful for any person, in or upon any public street, highway, sidewalk, alley or other public place in the County of Shasta, State of California, to loiter in front of, or in the vicinity of, or to picket in front of or in the vicinity of, or to carry, show or display any banner, transparency, badge or sign in front of, or in the vicinity of, any works, or factory, or any place of business or employment, for the purpose of inducing or influencing, or attempting to induce or influence, any person to refrain from entering any such works, or factory or place of business, or employment, or for the purpose of inducing or influencing, or attempting to induce or influence, any person to refrain from purchasing or using any goods, wares, merchandice; or other article or articles, or for the purpose of inducing or influencing, or attempting to induce or influence any person to refrain from doing or performing any service or labor in any works, factory, place of business or employment, or for the purpose of intimidating, threatening or coercing, or attempting to intimidate, threaten or coerce any person who is performing, seeking or obtaining service or labor in any such works, factory, place of business or employment.

Section 3. That any person violating any of the provisions of this Ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than TWENTY-FIVE and NO-100 ($25.00) DOLLARS nor more than ONE HUNDRED AND NO-100 ($100.00) Dollars or by imprisonment in the County Jail for a period of not more than fifty (50) days nor less than twelve (12) days or by both such fine and imprisonment.

If any section, sentence, clause or other part of this Ordinance is for any reason held to be unconstitutional, such decision shall not affect the remaining portions hereof. The Board of Supervisors of the County of Shasta, State of California, hereby declares that it would have passed this Ordinance or act and each section, sentence, clause and part thereof despite the fact that one or more sections, sentences, clauses, or parts thereof be declared unconstitutional.

This Ordinance shall take effect and be in force immediately upon its passing and all Ordinances of the County of Shasta, State of California, in conflict herewith are hereby repealed.

The Board of Supervisors of the County of Shasta, State of California, does hereby find, determine and declare to exist a county emergency affecting the peace, health, safety and comfort of the people and residents of the County of Shasta, State of California, caused by and resulting from disputes and differences between the employers of labor, their employees, organized labor and between different groups and factions of employees, which disputes and differences have created and increased a spirit of violent animosity between individuals and groups of said employers and employees, which has resulted in, and which continue to and threatens to continue to result in the use of coercion, picketing, and all manner of violence, and that such emergency arises out of the following facts, to-wit:

Certain groups of workers and employees within the County of Shasta, State of California, are organized into trade or labor unions, many of which are affiliated with State and National unions; the individual members of said unions are subject to the rules and regulations of said unions, and are required to pay for their membership

gations of becoming members of such unions; one of the primary objections which these employees have to such union membership is that the union member may be required, upon the dictate of his union, to go on strike, and that thereby the member is thrown out of work and is forced to suffer unnecessary hardships and may thereby even become a public charge. Said employees are satisfied with their employment, and it is to their individual interest, and to the interest of the County of Shasta that these employees be permitted to continue in their work uninterruptedly and with perfect freedom, for otherwise these employees cannot support themselves or their families and the County will have the burden of caring for them as public charges.

Efforts are being made by the aforesaid unionized groups of employees to force, by means of coercion, fear and violence, all laborers, workers and employees, regardless of their individual wishes, to become members of unions and to contribute financially thereto and to conform to the rules and regulations and dictates thereof, and by these means said unions and their members are seeking to control and regulate all business and employment in the County of Shasta. One of the means now being employed by said unions to accomplish the aforesaid purposes is the picketing of places of business in the County of Shasta, and unless they are prohibited from so doing, said unions and their members will continue to so picket, and will thereby agitate the peace of mind of the people of the County of Shasta, and will foment resistance to said union activities, and will bring about a condition of open physical violence and a state of riot and uncontrollable mob action which will endanger the lives, health, property, comfort and peace of mind of all the people and citizens of the County of Shasta.

There does not now exist any statute or Ordinance covering, regulating or prohibiting picketing as aforesaid, and the police officers, sheriffs and constables of the County of Shasta are now without authority to stop said picketing in the absence of an Ordinance pertaining thereto.

This Ordinance is hereby declared to be an urgency measure necessary for the immediate preservation of the public peace, health and safety, and shall, therefore, go into effect immediately, as hereinabove provided.

Passed by the Board of Supervisors of the County of Shasta, State of California, this 4th day of April, 1938, by the following vote:

AYES: Supervisors Junkans, Jessen, Colby, Plumb and Chatham.

Noes: None.

PUBLIC PLACES IN A LOUD OR UNUSUAL TONE, FOR CERTAIN PURPOSES THEREIN NAMED, AND PROVIDING A PENALTY FOR ANY VIOLATION THEREOF

THE BOARD OF SUPERVISORS OF THE COUNTY OF SHASTA, STATE OF CALIFORNIA, DO ORDAIN AS FOLLOWS:

Section 1. It shall be unlawful for any person in or upon any public street, highway, sidewalk, alley or public place in the County of Shasta, State of California, to make any loud or unusual noise, or to speak in a loud or unusual tone; or to cry out or proclaim, for the purposes of inducing or influencing, or attempting to induce or influence, any person to refrain from entering any works or factory or any places of business or employment, or for the purpose of inducing or influencing, or attempting to induce or influence any person to refrain from purchasing or using any goods, wares, merchandise or other article or articles, or for the purpose of inducing or influencing or attempting to induce or influence any person to refrain from doing or performing any service or labor in any works, factory, place of business or employment, or for the purpose of intimidating, threatening or coercing, or attempting to intimidate, threaten or coerce, any person who is performing, seeking or obtaining service or labor in any works, factory, place of business or employment.

Section 2. It shall be unlawful for any person, in or upon any public street, highway, sidewalk, alley or other public place in the County of Shasta, State of California, to loiter in front of, or in the vicinity of, or to picket in front of or in the vicinity of, or to carry, show or display any banner, transparency, badge or sign in front of, or in the vicinity of, any works, or factory, or any place of business or employment, for the purpose of inducing or influencing, or attempting to induce or influence, any person to refrain from entering any such works, or factory or place of business, or employment, or for the purpose of inducing or influencing, or attempting to induce or influence, any person to refrain from purchasing or using any goods, wares, merchandise, or other articles, manufactured, made or kept for sale therein, or for the purpose of inducing or influencing or attempting to induce or influence any person to refrain from doing or performing any

and upon conviction thereof shall be punished by a fine of not less than TWENTY-FIVE and NO-100 ($25.00) DOLLARS nor more than ONE HUNDRED AND NO-100 ($100.00) Dollars or by imprisonment in the County Jail for a period of not more than fifty (50) days nor less than twelve (12) days or by both such fine and imprisonment.

If any section, sentence, clause or other part of this Ordinance is for any reason held to be unconstitutional, such decision shall not affect the remaining portions hereof. The Board of Supervisors of the County of Shasta, State of California, hereby declares that it would have passed this Ordinance or act and each section, sentence, clause and part thereof despite the fact that one or more sections, sentences, clauses, or parts thereof be declared unconstitutional.

This Ordinance shall take effect and be in force immediately upon its passing and all Ordinances of the County of Shasta, State of California, in conflict herewith are hereby repealed.

The Board of Supervisors of the County of Shasta, State of California, does hereby find, determine and declare to exist a county emergency affecting the peace, health, safety and comfort of the people and residents of the County of Shasta, State of California, caused by and resulting from disputes and differences between the employers of labor, their employees, organized labor and between different groups and factions of employees, which disputes and differences have created and increased a spirit of violent animosity between individuals and groups of said employers and employees, which has resulted in, and which continue to and threatens to continue to result in the use of coercion, picketing, and all manner of violence, and that such emergency arises out of the following facts, to-wit:

Certain groups of workers and employees within the County of Shasta, State of California, are organized into trade or labor unions, many of which are affiliated with State and National unions; the individual members of said unions are subject to the rules and regulations of said unions, and are required to pay for their membership therein; many employees within the County of Shasta, (and in the opinion of this Board, the majority of such employees,) do not desire to incur the expense or subject themselves to the obli-

gations, and to the interest of the County of Shasta that these employees be permitted to continue in their work uninterruptedly and with perfect freedom, for otherwise these employees cannot support themselves or their families and the County will have the burden of caring for them as public charges.

Efforts are being made by the aforesaid unionized groups of employees to force, by means of coercion, fear and violence, all laborers, workers and employees, regardless of their individual wishes, to become members of unions and to contribute financially thereto and to conform to the rules and regulations and dictates thereof, and by these means said unions and their members are seeking to control and regulate all business and employment in the County of Shasta. One of the means now being employed by said unions to accomplish the aforesaid purposes is the picketing of places of business in the County of Shasta, and unless they are prohibited from so doing, said unions and their members will continue to so picket, and will thereby agitate the peace of mind of the people of the County of Shasta, and will foment resistance to said union activities, and will bring about a condition of open physical violence and a state of riot and uncontrollable mob action which will endanger the lives, health, property, comfort and peace of mind of all the people and citizens of the County of Shasta.

There does not now exist any statute or Ordinance covering, regulating or prohibiting picketing as aforesaid, and the police officers, sheriffs and constables of the County of Shasta are now without authority to stop said picketing in the absence of an Ordinance pertaining thereto.

This Ordinance is hereby declared to be an urgency measure necessary for the immediate preservation of the public peace, health and safety, and shall, therefore, go into effect immediately, as hereinabove provided.

Passed by the Board of Supervisors of the County of Shasta, State of California, this 4th day of April, 1938, by the following vote:

AYES: Supervisors Junkans, Jessen, Colby, Plumb and Chatham.

Noes: None.

Absent: None.

ANDREW T. JESSEN,
Chairman.

ATTEST: ERROL A. YANK,
Clerk.

Dont be
a
SCAB

Shasta Tunnel & Construction Workers

LOCAL 260

EXHIBIT 52

84

CIO

Picket Line

EXHIBIT 63

85

This JOB Unfair to CIO

EXHIBIT b4

[fol. 87] DEFENDANT'S EXHIBIT 1

UNITED STATES OF AMERICA:

BEFORE THE NATIONAL LABOR RELATIONS BOARD, TWENTIETH REGION

Case No. XX-C-599

In the Matter of UNITED CONCRETE & PIPE CO. and SHASTA TUNNEL & CONSTRUCTION UNION LOCAL #260

This is to certify that the attached is a true and correct copy of the Charge in the above matter on file in the office of the Twentieth Region of the National Labor Relations Board.

(Signed) John T. McTernan, Acting Regional Director, 20th Region, National Labor Relations Board.

[fol. 88] UNITED STATES OF AMERICA:

BEFORE THE NATIONAL LABOR RELATIONS BOARD, TWENTIETH REGION

Case No. XX C 599

In the Matter of UNITED CONCRETE & PIPE CO. and SHASTA TUNNEL & CONSTRUCTION UNION LOCAL # 260

Date Filed Feb. 4, 1939

Charge

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that United Concrete & Pipe Co. (Redding, Calif., Los Angeles, Cal.—Main Office) has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (5) of said Act, in that the United Concrete & Pipe Company has interfered with and is interfering with the self organization of its workers by refusing to recognize and bargain with the union in spite of the fact that said organization represents a large majority of its workers employed

on its tunnel job of the Central Valley project near Redding, California, on which job the workers in question are employed.

Said company, in spite of the fact that the A. F. of L. represents only two men now employed, has entered into a contract with the A. F. of L. as the bargaining agency for the job.

[fol. 89] The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the name and official position of the person acting for the organization.)

Shasta Tunnel & Construction Workers Union—Local #260. (Sgd.) John Morgan, Int. Rep., Box 18, Central Valley, Calif.

Subscribed and sworn to before me this 4 day of February, 1939, at San Francisco, Cal. (Signed and Sealed) E. S. Neal, Field Examiner.

[fol. 90] DEFENDANT'S EXHIBIT 2

UNITED STATES OF AMERICA:

BEFORE THE NATIONAL LABOR RELATIONS BOARD, TWENTIETH REGION

Case No. XX-C-599

In the Matter of UNITED CONCRETE & PIPE COMPANY and SHASTA TUNNEL & CONSTRUCTION WORKERS UNION LOCAL #260

This is to certify that the attached is a true and correct copy of the Amended Charge in the above matter on file in the office of the Twentieth Region of the National Labor Relations Board.

(Signed) John T. McTernan, Acting Regional Director, 20th Region, National Labor Relations Board.

[fol. 91] UNITED STATES OF AMERICA:

BEFORE THE NATIONAL LABOR RELATIONS BOARD, 20th REGION

Case No. XX C 599

In the Matter of UNITED CONCRETE & PIPE COMPANY and SHASTA TUNNEL & CONSTRUCTION WORKERS UNION LOCAL #260

Date Filed Feb. 11, 1939

Amended Charge

Pursuant to Section 10 (b) of the National Labor Relations Act, the undersigned hereby charges that United Concrete & Pipe Company, Redding, Calif. (Head Office at Los Angeles, Cal.) has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1) and (3) & (5) of said Act, in that the United Concrete & Pipe Company has interfered with and is interfering with the self organization of its workers by

1. Refusing to recognize and bargain with the union which organization represents a large majority of its workers.

2. Continuing to recognize and bargain with the A. F. L. with which union it entered into a contract on the date of January 28, 1939, and which union did not at that time and has at no time since represented the company employees.

3. Locking out on the date of Feb. 2, 1938 the following workers solely because of their expressed desire to be represented by the above named union: Gus Larsen, Frank Carson, Frank Anderson, Carl Nelson, Jack Casperson, Chas. Anderson, V. H. Hawkonson, O. N. Blank, Arvid Larson, L. D. Palmer, Charles Carlson, Charles Nelson, Avid Holmes, John H. Carlson, James Humphreys, Chas. Phillips, K. Borglund, Fred Severseen.

[fol. 92] The undersigned further charges that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Name and address of person or labor organization making the charge. (If made by a labor organization, give also the

name and official position of the person acting for the organization.)

Shasta Tunnel Construction Workers Union Local #260. (Signed John Wiese, Sec'y, P. O. Box 88, Central Valley, Calif.

Subscribed and sworn to before me this 11 day of February, 1939, at San Francisco, Cal. (*Signed and Sealed.*) E. S. Neal, Field Examiner.

[fol. 93]. IN SUPERIOR COURT OF CALIFORNIA, IN AND FOR THE COUNTY OF SHASTA

10626

PEOPLE

vs.

JOHN CARLSON

DECISION

On this appeal from the justice's court of Township No. Nine, there seems to be no point of fact or law urged or available except the constitutionality of the county picketing ordinance. In the habeas corpus proceedings in this court last February, No. 10119, this court rendered an opinion upholding this ordinance and it now adopts said opinion and makes it a part of the decision in the instant case. Since that time there have been several rulings of superior courts in this state on the subject. But one of them was against the constitutionality of such an ordinance, the decision of the superior court of Contra Costa County. I have had this ruling and it seems to be more political than legal, using the word in its proper sense, as it is based on the alleged liberalism of California legislation and tendencies. However I am still convinced that anti-picketing legislation is not unconstitutional. It is within the proper province of the legislative bodies and, as the Shasta County board of supervisors has seen fit to pass this ordinance, it will be upheld by this court as long as it remains in effect.

The judgment appealed from is affirmed.

November 14th, 1939.

(Sgd.) Albert F. Ross, Judge.

[fol. 94] IN SUPERIOR COURT OF CALIFORNIA, IN AND FOR THE COUNTY OF SHASTA

No. 10626

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff,

vs.

JOHN CARLSON, Defendant

JUDGMENT ON APPEAL

After hearing on appeal as provided by law, and submission of the same to this Court:

It is hereby ordered, adjudged and decreed that the judgment of the Justice's Court of Township No. Nine, County of Shasta, State of California, be and the same is hereby affirmed, and the clerk of this court is directed to transmit a certified copy of this judgment and the opinion of the court to said Justice's Court, after which said justice's court shall have full jurisdiction to proceed in this matter to carry into effect the judgment of conviction which is hereby affirmed.

Done in Open Court this 14th day of November, 1939.

(Sgd.) Albert F. Ross, Judge of the Superior Court.

[fol. 95] IN SUPERIOR COURT OF CALIFORNIA, IN AND FOR THE COUNTY OF SHASTA

No. 10119

In the Matter of the Petition of RICHARD GLAIDSTEIN, et al., for a Writ of Habeas Corpus

OPINION

The only point on this hearing is whether the Anti-Picketing Ordinance of Shasta County is unconstitutional to the extent that it prohibits the acts set forth in the complaint filed agains these petitioners.

"The undisputed general rule is that all presumptions and intendments are in favor of the constitutionality of statutes; that all doubts are to be resolved in favor of and not against the validity of a statute; that before an act can be declared invalid by the judiciary for the reason that it is

in conflict with the constitution, such conflict must be clear, positive, abrupt and unquestionable, and that in case of fair, reasonable doubt of its constitutionality, the statute should be upheld." 5 California Jurisprudence, page 628.

There seems to be no definite holding by the Courts of California that an ordinance or statute prohibiting peaceful picketing is or would be either constitutional or unconstitutional. The question is very debatable, and, from the tendency of the courts in recent years to liberality in such matters, might be decided by the higher courts in favor of [fol. 96] unconstitutionality.

However the courts to date have only gone so far as to recognize a right of peaceful picketing, and have carefully avoided holding that this right might not yield to a proper exercise of the police power by the legislature, boards of supervisors or city councils.

The most recent case, In Re Lyons, 27 California Appellate Reports, Second Series, page 293, expressly states, "No statute or ordinance prohibiting or regulating picketing is here involved. What may be the right under the police powers of the state, or any of its political subdivisions, to *prohibit* or regulate the use of the public streets or sidewalks for picketing is not before us and is not decided."

The various other cases on the subject carry the same thought throughout.

Therefore in the absence of any ruling of the Appellate Courts or the Supreme Court of this state that such a statute or ordinance is unconstitutional, and there certainly being at least a logical argument that such is a proper exercise of the police power for the preservation of the public peace and safety, I hold the ordinance must be deemed to be constitutional.

The court therefore makes the following minute order:

The writ of habeas corpus is discharged, the petition is denied and the petitioners are remanded in the custody of [fols. 97-98] the sheriff of Shasta County, and the clerk is directed to redeliver to the sheriff the original warrant of arrest which was filed by said sheriff with his return herein, together with a certified copy of this minute order.

February 27, 1939.

Albert F. Ross, Judge of the Superior Court.

[fol. 99] SUPREME COURT OF THE UNITED STATES

[Title omitted]

Petition for Appeal, Assignment of Errors, and Prayer for Reversal

Considering himself aggrieved by the final judgment and decision of the Superior Court of the State of California, in and for the County of Shasta, in the above-entitled cause, the petitioner hereby prays that an appeal be allowed to the Supreme Court of the United States.

SUMMARY STATEMENT OF THE CASE

The validity of a statute of the State of California within the meaning and intent of Section 237 (a) of the Judicial [fol. 100] Code of the United States is drawn into question in the above-entitled cause, upon the grounds that said statute deprived appellant, in contravention of the Fourteenth Amendment to the Constitution of the United States, of liberty and property without due process of law, by denying him freedom of speech, freedom of the press, freedom of locomotion, the right peaceably to assemble, the equal protection of the laws, and rights under the National Labor Relations Act, 49 U. S. Statutes, 449. Said statute is an ordinance of the County of Shasta, State of California, entitled "Anti-Picketing Ordinance", passed and adopted by the Board of Supervisors of the said County on the 4th day of April, 1938.

The appellant was convicted in the Justice's Court of Township No. 9, County of Shasta, State of California, of a violation of said ordinance, in that the appellant was charged with, and found guilty of picketing upon a public highway within said County, for the purpose of inducing and influencing persons to refrain from doing and performing services and labor at a place of employment and business known as the Delta Tunnel Project.

The conviction was appealed to the Superior Court of the State of California, in and for the County of Shasta. Said Superior Court upheld and sustained said conviction. The judgment and decision of said Superior Court rejected the contentions of appellant that the portions of said ordinance under which appellant was charged and for a viola-

[fol. 101] tion of which he was found guilty, were and are, on their face and as enforced and applied in the case of appellant, unconstitutional by virtue of the Fourteenth Amendment to the Constitution of the United States.

The said judgment and decision of said Superior Court was made and entered on the 14th day of November, 1939. Said judgment and decision is a judgment of the court of last resort of the State of California in said case.

Assignment of Errors

The appellant assigns the following errors in the record and proceedings in said case:

1. The said Superior Court erred in its decision and judgment that the said Anti-Picketing Ordinance, on its face and as enforced and applied to the appellant, is valid and constitutional, and does not deprive the appellant of liberty and property without due process of law under the Fourteenth Amendment to the Constitution of the United States, by denying the appellant freedom of speech, freedom of the press, freedom of locomotion, the equal protection of the laws, the right peaceably to assemble, and the rights of the appellant under the National Labor Relations Act, 49 U. S. Statutes 449.

[fol. 102] 2. Said Superior Court erred in its decision and judgment in that it failed to rule and decide that the portions of said ordinance under which the appellant was charged and for a violation of which he was convicted, were and are unconstitutional by virtue of the decisions of the Supreme Court of the United States in Senn vs. Tile Layers' Protective Union, 301 U. S. 468; Hague vs. Committee for Industrial Organization, 83 L. Ed. 928; and Schneider vs. Irvington (and 3 other cases), 84 L. Ed. Adv. Op. 415.

Prayer for Reversal

For which errors, the appellant prays that said judgment of the Superior Court of the State of California, in and for the County of Shasta, dated November 14, 1939, in the above-entitled cause, be reversed, and a judgment rendered in favor of the appellant, and for costs.

Gladstein, Grossman & Margolis, Attorneys for Appellant, by Richard Gladstein.

Copy received this 8th day of January, 1940.

Lawrence W. Carr, District Attorney.

[fol. 103] SUPREME COURT OF THE UNITED STATES

[Title omitted]

ORDER ALLOWING APPEAL

The appellant in the above-entitled matter, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above-entitled matter by the Superior Court of the State of California, in and for the County of Shasta, on the 14th day of November, 1939, and from each and every part thereof; and

The appellant having presented his petition for appeal, assignment of errors, prayer for reversal, and statement [fol. 104] as to jurisdiction, pursuant to the statutes and rules of the Supreme Court of the United States in such cases made and provided;

It is now ordered that an appeal be, and the same is, hereby allowed to the Supreme Court of the United States from the Superior Court of the State of California, in and for the County of Shasta, in the above-entitled cause, as provided by law; and

It is further hereby ordered that the clerk of the Superior Court of the State of California, in and for the County of Shasta, shall prepare and certify a transcript of the record, proceedings, and judgment in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Supreme Court within 60 days of this date; and

It is further hereby ordered that security for costs on appeal be fixed in the sum of $100.00.

Dated: This 8th day of January, 1940.

Albert F. Ross, Judge of the Superior Court of the State of California, in and for the County of Shasta.

Copy received this 8th day of January, 1940.

Lawrence W. Carr, District Attorney.

[fols. 105-106] Bond on appeal for $100.00 omitted in printing.

[fols. 107-108] Citation, in usual form, showing service on Lawrence W. Carr omitted in printing.

[fol. 109] SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed Feb. 7, 1940

Comes now the Appellant and adopts his Assignment of Errors as his Statement of Points to be Relied Upon and represents that the whole of the record as filed is necessary for consideration of the case.

Lee Pressman, Joseph Kovner, Attorneys for Appellant.

Copy of the foregoing Statement duly received this 5th day of February, 1940.

Lawrence W. Carr, Attorney for Appellee.

[fol. 110] [File endorsement omitted.]

Endorsed on Cover: File No. 44,074, California, Superior Court, County of Shasta, Term No. 667. John Carlson, Appellant, vs. The People of the State of California. Filed January 25, 1940. Term No. 667. O. T. 1939.

FILE COPY

Office - Supreme Court, U. S.
FILED
JAN 25 1940
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 667

JOHN CARLSON

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SHASTA.

STATEMENT AS TO JURISDICTION

RICHARD GLADSTEIN,
AUBREY GROSSMAN,
BEN MARGOLIS,
LEE PRESSMAN,
JOSEPH KOVNER,
Counsel for Appellant.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 667

JOHN CARLSON

vs. *Appellant,*

THE PEOPLE OF THE STATE OF CALIFORNIA.

Appellees.

STATEMENT AS TO JURISDICTION

In compliance with Rule 12 of this Court, the appellant herewith submits his statement showing that the appeal in the above-entitled cause is properly before this Court.

Opinion Below

The opinion of the Superior Court of the State of California, in and for the County of Shasta, is not officially reported. It refers to and adopts a former opinion rendered in another and different case. Both the opinion in the instant case, and the earlier opinion made applicable to the instant case by the court's express language, are appended to this statement.

Jurisdiction

(1) Statutory Provisions Sustaining Jurisdiction

The jurisdiction of this court is invoked under Section 237 (a) of the Judicial Code, as amended by the Acts of February 13, 1925, January 31, 1928, and April 26, 1928.

(2) State Statute Drawn Into Question and Decision in Favor of Its Validity

The appellant contended in the court below that certain portions of the anti-picketing ordinance of the County of Shasta, State of California (under which portions the appellant was charged and for a violation of which he was convicted) were repugnant to the Constitution of the United States in that, on their face and as applied to and enforced against the appellant, said portions of said ordinance deprive the appellant, in contravention of the Fourteenth Amendment of the Constitution of the United States, of liberty and property without due process of law, by denying him freedom of speech, freedom of press, freedom of locomotion, the right peaceably to assemble, the equal protection of the laws, and rights under the National Labor Relations Act, 49 U. S. Statutes 449.

The decision of the court below was in favor of the validity of the said ordinance in its entirety.

The ordinance in its entirety is appended hereto. Those portions of the ordinance under which the appellant was charged and for a violation of which he was convicted, follow:

> "Section 2. It shall be unlawful for any person, in or upon any public street, highway, sidewalk, alley or other public place in the County of Shasta, State of California, to loiter in front of or in the vicinity of, or to carry, show or display any banner, transparency, badge or sign in front of, or in the vicinity of, any works,

or factory, or any place of business or employment, for the purpose of inducing or influencing, or attempting to induce or influence * * * any person to refrain from doing or performing any service or labor in any works, factory, place of business or employment. * * *"

A municipal ordinance is a "State Statute" within the meaning of Section 237 (a) of the Judicial Code.

Schneider v. *Irvington*, 84 L. Ed. 115;
Lovell v. *City of Griffin*, 303 U. S. 444.

(3) Finality of Judgment

The judgment forming the basis of the appeal herein is final both in form and in substance, and disposes of all the elements of the controversy in the court below. The judgment affirms the legality of the conviction of appellant, and upholds the sentence imposed on appellant of a fine of $25.00 or 12 days in jail.

(4) Judgment of the Highest Court

The judgment of the Superior Court of the State of California, in and for the County of Shasta, is that of the highest court in which, under the laws of the State of California, such judgment could be had in the case.

This case originated as a criminal prosecution against the appellant, in the Justice's Court of Township No. 9, County of Shasta, State of California. The said ordinance under which the appellant was charged, and for a violation of which he was convicted, provides by its terms that any person violating any provision of said ordinance shall be deemed guilty of a misdemeanor.

Under the provisions of Section 1425 of the Penal Code of the State of California, jurisdiction for the prosecution of misdemeanors is lodged in the Justice's Court. Under

Section 1466 of said Penal Code, an appeal from the Justice's Court lies to the Superior Court.

The California courts have ruled that no appeal or review will lie from a decision by the Superior Court reviewing a decision of a Justice's Court.

Berkeley v. *Cunnyngham*, 218 Cal. 714;
McLean v. *Freiberger*, 215 Cal. 1;
Johnston v. *Wolf*, 208 Cal. 286.

(5) Appeal Timely Taken

The order and judgment from which this appeal is taken was entered on November 14, 1939. On November 19, 1939, the petitioner, within the time limit fixed by the rules of the Superior Court of the State of California, County of Shasta, filed his petition for rehearing. On the 4th day of December, 1939, the said Superior Court denied said petition for rehearing. On the 8th day of January, 1940, the appellant filed with said Superior Court his petition for appeal accompanied by his assignment of errors and the within "Statement as to Jurisdiction". On the 8th day of January, 1940, the Honorable Albert F. Ross, Judge of the said Superior Court, made and entered an order allowing the within appeal to the Supreme Court of the United States.

(6) Constitutional Question Timely and Sufficiently Raised

The claim that those portions of the Shasta County Anti-Picketing Ordinance under which the appellant was charged, and for a violation of which he was convicted, offend against constitutional liberty by denying freedom of speech, freedom of the press, freedom of locomotion, the right peaceably to assemble, and the equal protection of the laws, as well as depriving him of property without due process of law, all in violation of the Fourteenth Amendment of the Constitution of the United States, was asserted consistently and frequently in the courts below.

The claim was first made by demurrer to the complaint, a motion to dismiss the complaint, a motion to quash the complaint, and objection to the jurisdiction of the trial court, all of which were urged on the occasion of the appellant's first appearance before the trial court (Rep. Tr., p. 2, 3; Cl. Tr., p. 4-13). These pleas were filed by the appellant prior to the introduction of any evidence. Said pleas were overruled, and the appellant entered his plea of not guilty.

In the course of the trial proceedings, at the conclusion of the People's case, the appellant made another motion to dismiss, based on all of the aforementioned constitutional grounds (Rep. Tr., p, 13, 14; Cl. Tr., p. 15-16). This motion was overruled.

At the conclusion of the trial, the appellant made a further motion to dismiss, based on all of the aforementioned constitutional grounds (Rep. Tr., p. 75, 76; Cl. Tr., p. 18-20). This motion was likewise overruled.

On being found guilty, the appellant filed a motion in arrest of judgment, based upon the same constitutional grounds (Rep. Tr., p. 76; Cl. Tr., p. 21-26). This motion was overruled.

The appellant appealed from the judgment and sentence of the Justice's Court to the Superior Court, raising the same federal constitutional issues (Rep. Tr., p. 77; Cl. Tr., p. 27-31).

The court below, after expressly considering these constitutional objections, rejected them and upheld the ordinance in its entirety.

In his petition for a rehearing, filed with the Superior Court, the appellant urged that the decision and judgment of the said Superior Court of itself deprived him of liberty and property without due process of law, in contravention of the Fourteenth Amendment to the Constitution of the United States, by denying him freedom of speech, freedom of the press, freedom of locomotion, the right peaceably to

assemble, the equal protection of the laws, and rights under the National Labor Relations Act, 49 U.S. Statutes 449. The court denied the petition for rehearing, without opinion.

(7) Nature of the Case

The facts in the case are not in dispute. That the appellant violated those portions of the ordinance which prohibit peaceful picketing, is not denied.

At the time of his arrest on February 24, 1939, appellant was engaged, with others, in peacefully picketing the Delta Tunnel Project (Rep. Tr., p. 5). He was carrying a banner on which were inscribed the words: "This job unfair to C.I.O." Rep. Tr., p. 29; Exhibit b4).

Appellant had been hired as a tunnel worker at the project on January 26 or 27, 1939 (Rep. Tr., p. 15). The operator of the Project, a firm known as the United Concrete and Pipe Company, had no collective bargaining agreement governing the wages, hours, or working conditions of its employees (Rep. Tr., p. 41, 42).

Within a few days after appellant went to work, an organizer of the American Federation of Labor sought to enroll him and other workers on the Project into the A. F. of L. (Rep. Tr., p. 16). At noon of February 2, all twenty-nine men employed on the project held a meeting, agreed that it was desirable to select a collective bargaining representative, and conducted an election amongst themselves (Rep. Tr., p. 17, 18). It was agreed that the entire group would be bound by the selection of the majority (Rep. Tr., p. 19). A clear majority, twenty-two men, voted for the Shasta Tunnel Workers' Union, Local 250, of the International Mine, Mill and Smelter Workers' Union, an affiliate of the C.I.O. (Rep. Tr., p. 18, 19). Nineteen or twenty of these men, including the appellant, Carlson, thereupon applied in writing to Local 260 for membership, and were accepted by the union (Rep. Tr., p. 37).

From February 2 to February 23, except for a brief interval, the Project was shut down (Rep. Tr., p. 20, 21). During this period Local 260 sought, without success, to obtain collective bargaining with the employer (Rep. Tr., p. 41), 42). On February 4, and again on February 11, Local 260 filed with the National Labor Relations Board charges under oath accusing the employer of unfair labor practices in violation of Sections 8 (1), 8 (3), and 8 (5) of that Act (Rep. Tr., p. 36, 40, 41; Defendant's Exhibit 1 and 2).

On February 23, the employer re-opened the Project with new employees (Rep. Tr., p. 21). The men who had voted for Local 260 were neither requested nor allowed to return to work (Rep. Tr., p. 21). Thus locked out, these men, including the appellant, determined to peacefully picket the Project (Rep. Tr., p. 43, 44).

Picketing began early in the morning of February 24. Less than two hours later, appellant and his co-pickets were arrested and charged with violation of the county anti-picketing ordinance (Rep. Tr., p. 5). It is this arrest which is the subject of the within appeal.

The Assistant District Attorney, who was the only witness produced by the People at the trial, described the picketing as orderly and peaceful (Rep. Tr. p. 10, 11). There was no trespass on private property (Rep. Tr. p. 10), no interference with the free passage of persons or vehicles (Rep. Tr. p. 11, 12); no violence, molestation, coercion, intimidation or threats (Rep. Tr. p. 10, 11). No disturbance of the peace occurred in connection with the picketing or as a result of the picketing (Rep. Tr. p. 11).

The Federal Constitutional Questions Involved are Substantial and a Decision by This Court is Necessary to Resolve Conflicts in the Construction of the Constitution

(a) The question in this case is whether a county may, consistent with the federal constitution, deny the rights of freedom of speech, freedom of the press, and freedom of

assembly under the guise of an ordinance prohibiting peaceful picketing. The appellant submits that the necessary effect of this ordinance on its face and as applied to the facts in this case is to deny fundamental civil liberties. The ordinance was upheld in the court below as a reasonable exercise of the police power. The existence of a substantial federal question in the case at bar is thus apparent and indisputable.

This court has spoken in unmistakable terms:

> "This court has characterized the freedom of speech and that of the press as fundamental personal rights and liberties. The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of the Constitution that exercise of the rights lies at the foundation of free government by free men. It stresses, as do many opinions of this court, the importance of preventing the restriction of enjoyment of these liberties.
>
> "In every case, therefore, where legislative abridgement of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation."
>
> *Schneider* v. *Irvington* (Handbill cases), 84 L. Ed. Adv. Op. 115 at 120.
> *Hague* v. *CIO*, 306 U.S. 624
> *Lovell* v. *Griffin*, 303 U.S. 444
> *Herndon* v. *Lowry*, 301 U.S. 242
> *Grosjean* v. *American Press Co.*, 297 U.S. 233
> *DeJonge* v. *Oregon*, 299 U.S. 353
> *Crandall* v. *Nevada*, 73 U.S. 35
> *Territory* v. *Anduha*, 48 Fed (2d) 171

Moreover, this court has already granted certiorari in another case involving the declaration of the validity of a similar ordinance by a state court. *Thornhill* v. *Alabama*, No. 514, Cert. granted, Dec. 8, 1939.

If the decision of the court below on this case should stand, it would nullify the decisions of this court protecting

civil liberties. In the *Handbill* cases, supra, this court declared invalid an ordinance of the City of Milwaukee which prohibited the distribution of leaflets by a picket standing before a meat market announcing that the market was unfair to organized labor. *Schneider* v. *Irvington*, supra. In the case of *Hague* v. *CIO*, supra, this court enjoined the enforcement of an ordinance of Jersey City which prohibited union street meetings and the carrying of placards and banners on the street by union members during labor disputes.

If an ordinance which in terms directly attempts to prohibit or abridge the right to distribute leaflets, the right to peaceful assembly, and the right to freedom of the press, is unconstitutional and invalid, then certainly an ordinance such as that involved in this case which attempts to curb the same fundamental rights under the guise of prohibiting picketing, must likewise be declared unconstitutional and invalid.

This Court has struck down attempts to abridge civil liberties through the use of tax powers, *Grossjean* v. *American Press Co.*, supra; of criminal sedition laws, *De Jonge* v. *Oregon*, supra; and of insurrection statutes, *Herndon* v. *Lowry*, supra.

The great decisions of this Court protecting civil liberties have made it clear that in modern times workers engaged in protecting their livelihood and their right to organize in a peaceful and lawful manner, necessarily must exercise these fundamental rights.

A municipal ordinance cannot evade the constitutional guarantees simply by outlawing as picketing the action of workers who distribute leaflets or who carry signs and placards or who meet together to protest conditions and to persuade others to their side. The act of peacefully picket-

ing is an exercise of the right of freedom of speech, freedom of the press, freedom of assembly, and freedom of locomotion.

Senn v. *Tile Layers Union*, 301 U.S. 468
In re Lyons, 27 Cal. App. (2d) 293
People v. *Harris*, 91 Pac. (2d) 989 (Colo.)
Hague v. *CIO*, supra.
Schneider v. *New Jersey*, supra.
Reno v. *Second Judicial District Court, Nev. Sup. Ct.* No. 3245, Nov. 21, 1939, CCH Labor Law, Par. 18,488.

The appellant has been denied all of these rights by the declaration of validity of this ordinance.

(b) The appellant has been deprived of property rights under the National Labor Relations Act. The right to collective bargaining secured to workers by the National Labor Relations Act is a property right entitled to protection by the Fourteenth Amendment from invasion by the states.

Virginia Railway Co. v. *System Federation*, 300 U.S. 515
Texas, etc. Co. v. *Brotherhood*, 33 Fed. (2d) 13 (Affirmed 281 U.S. 548)
Civil Rights Statutes, 8 U.S.C. Sec. 43, 17 Stat. 13.

The act of peaceful picketing by workers engaged in a labor dispute with their employer, is one of the "concerted activities" of Section 7 of the National Labor Relations Act. The free exercise of such picketing without interference from employers, is an essential of the right of collective bargaining.

In the matter of Williams Coal Co., 11 NLRB 579

(c) Appellant has been denied the equal protection of the laws. The ordinance by its terms applies to "any person", whether laborer or not, who seeks, through publicity, to persuade potential patrons of a business establishment not

to deal with such establishment. But in practice, the ordinance is used only against workers, to deny them the equal enjoyment, protection and security of their personal, civil and property rights. Such an application, confined to members of the working class, is itself a violation of the Fourteenth Amendment. *Yick Wo* v. *Hopkins*, 118 U.S. 220; *Ex Parte Lerner*, 281 Mo. 24.

(d) The ordinance involved herein, on its face and as applied to the appellant, is too vague and indefinite to provide a standard of guilt which is sufficiently ascertainable to satisfy the due process clause of the Fourteenth Amendment to the Federal Constitution. *Herndon* v. *Lowry*, supra.

(e) A decision by this court is necessary to resolve conflicts in the construction of the constitution. While it appears to be clear that ordinances attempting to prohibit peaceful picketing are unconstitutional, there have been a number of decisions in the states reaching contrary results on this important constitutional question. The Alabama highest court has upheld such an ordinance. See *Thornhill* v. *Alabama*, supra. A lower court in Oregon has likewise upheld similar restrictions. *American Federation of Labor and Congress of Industrial Organization* v. *Bain*. Circuit Court, Multnomah County, Oregon, #132-244 decided July 8, 1939).

On the other hand, the Colorado and Nevada highest courts have held such ordinances unconstitutional. *People* v. *Harris*, supra; *Reno* v. *Second Judicial District Court*, *supra*.

Within the State of California, there have been a number of decision by Superior Courts, acting as courts of last resort in cases appealed from the Justice's or Police Court, construing identical or practically identical ordinances. Since the jurisdiction of a Superior Court is county-wide, and no

appeal or review to any higher California court lies from a Superior Court acting as an appellate tribunal, a decision of a Superior Court establishes the law for its county. The Superior Courts of Contra Costa and Alameda Counties have refused, on constitutional grounds, to uphold prosecutions for peaceful picketing under ordinances substantially similar to that involved in the case at bar. (*People* v. *Watson*, Contra Costa No. 2824, decided July 6, 1939; *Fels* v. *Justice's Court*, Alameda County No. 142,425, decided Jan. 21, 1937.) But the Superior Courts of Madera, Yuba and Shasta Counties have ruled to the contrary and upheld the prohibition by ordinance of peaceful picketing. (*Ex parte Patterson*, Madera County No. Cr. 1235, decided Nov. 1, 1939; *People* v. *Bell*, Yuba County No. 601 (Crim.), decided Dec. 7, 1939; *People* v. *Carlson*, Shasta County No. 10626, decided No. 14, 1939.) It therefore results that one fay be punished by fine and imprisonment in one county for doing that which constitutes the exercise of a constitutional right in another county within the same state. Consequently, unless there is a determination of the conflict by this Court, the Constitution of the United States means one thing in some states and in some California counties, and means something entirely different in other states and other California counties.

Conclusion

WHEREFORE, it is respectfully submitted that the appellant in the above-entitled cause comes properly within the jurisdiction of this Court.

GLADSTEIN, GROSSMAN & MARGOLIS,
Attorneys for Appellant.

by RICHARD GLADSTEIN.

EXHIBIT "A"

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SHASTA

No. 10626

PEOPLE v. JOHN CARLSON

Decision

On this appeal from the justice's court of Township No. Nine, there seems to be no point of fact or law urged or available except the constitutionality of the county picketing ordinance. In the habeas corpus proceedings in this court last February, No. 10119, this court rendered an opinion upholding this ordinance and it now adopts said opinion and makes it a part of the decision in the instant case. Since that time there have been several rulings of superior courts in this state on the subject. But one of them was against the constitutionality of such an ordinance, the decision of the superior court of Contra Costa County. I have had this ruling and it seems to be more political than legal, using the word in its proper sense, as it is based on the alleged liberalism of California legislation and tendencies. However I am still convinced that anti-picketing legislation is not unconstitutional. It is within the proper province of the legislative bodies and, as the Shasta County board of supervisors has been fit to pass this ordinance, it will be upheld by this court as long as it remains in effect.

The judgment appealed from is affirmed.

November 14th, 1939.

(Sgd.) ALBERT F. ROSS,
Judge.

EXHIBIT "B"

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SHASTA

No. 10626

THE PEOPLE OF THE STATE OF CALIFORNIA,
Plaintiff,

v.

JOHN CARLSON,
Defendant.

Judgment on Appeal

After hearing on appeal as provided by law, and submission of the same to this Court;

It is hereby ordered, adjudged and decreed that the judgment of the Justice's Court of Township No. Nine, County of Shasta, State of California, be and the same is hereby affirmed and the clerk of this court is directed to transmit a certified copy of this judgment and the opinion of the court to said Justice's Court, after which said justice's court shall have full jurisdiction to proceed in this matter to carry into effect the judgment of conviction which is hereby affirmed.

Done in Open Court this 14th day of November, 1939.

(Sgd.) ALBERT F. ROSS,
Judge of the Superior Court.

EXHIBIT "C"

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,
IN AND FOR THE COUNTY OF SHASTA

No. 10119.

In the Matter of the Petition of Richard Gladstein, et al., for a Writ of Habeas Corpus.

The only point on this hearing is whether the Anti-Picketing Ordinance of Shasta County is unconstitutional to the extent that it prohibits the acts set forth in the complaint filed against these petitioners.

"The undisputed general rule is that all presumptions and intendments are in favor of the constitutionality of statutes; that all doubts are to be resolved in favor of and not against validity of a statute; that before an act can be declared invalid by the judiciary for the reason that it is in conflict with the constitution, such conflict must be clear, positive, abrupt and unquestionable, and that in case of fair, reasonable doubt of its constitutionality, the statute should be upheld." 5 California Jurisprudence, page 628.

There seems to be no definite holding by the Courts of California that an ordinance or statute prohibiting peaceful picketing is or would be either constitutional or unconstitutional. The question is very debatable, and, from the tendency of the courts in recent years to liberality in such matters, might be decided by the higher courts in favor of unconstitutionality.

However the courts to date have only gone so far as to recognize a right of peaceful picketing, and have carefully avoided holding that this right might not yield to a proper

exercise of the police power by the legislature, boards of supervisors or city councils.

The most recent case, In Re Lyons, 27 California Appellate Reports, Second Series, page 293, expressly states, "No statute or ordinance prohibiting or regulating picketing is here involved. What may be the right under the police powers of the state, or any of its political subdivisions, to *prohibit* or regulate the use of the public streets or sidewalks for picketing is not before us and is not decided."

The various other cases on the subject carry the same thought throughout.

Therefore in the absence of any ruling of the Appellate Courts or the Supreme Court of this state that such a statute or ordinance is unconstitutional, and there certainly being at least a logical argument that such is a proper exercise of the police power for the preservation of the public peace and safety, I hold the ordinance must be deemed to be constitutional.

The court therefore makes the following minute order:

The writ of habeas corpus is discharged, the petition is denied and the petitioners are remanded in the custody of the sheriff of Shasta County, and the clerk is directed to redeliver to the sheriff the original warrant of arrest which was filed by said sheriff with his return herein, together with a certified copy of this minute order.

February 27, 1939.

ALBERT F. ROSS,
Judge of the Superior Court.

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CLERK

IN THE

Supreme Court of the United States

No. 667

OCTOBER TERM, 1939

JOHN CARLSON, *Appellant*

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

Appeal from Superior Court of Shasta County, State of California

BRIEF FOR THE APPELLANT

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THE CORNELIUS PRINTING COMPANY

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

No. 667

JOHN CARLSON, *Appellant*

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

Appeal from Superior Court of Shasta County, State of California

BRIEF FOR THE APPELLANT

OPINIONS BELOW

The opinion below is not reported, but is printed in the transcript of the record, together with the opinion in a related case (R. 72-73).

JURISDICTION

The jurisdiction of this Court rests on Section 237 (a) of the Judicial Code, as amended by the Acts of February 13, 1925, January 31, 1928, and April 26, 1928. The appellant, John Carlson, was convicted in the Justice's Court of Township Number Nine, Shasta County, California, for a violation of a county ordinance and was sentenced to imprisonment for twelve days in default of payment of a fine of twenty-five dollars. The judgment was affirmed by the Superior Court of Shasta

County from which there is no further appeal allowed in the state courts. The case comes here on appeal.

QUESTIONS PRESENTED

(1) Whether the Anti-Picketing ordinance of Shasta County on its face and as construed and applied to the appellant is valid and constitutional;

(2) Whether the Superior Court of Shasta County erred in its decision and judgment in that it failed to rule or decide that the ordinance, under which the appellant was charged and for violation of which he was convicted, was and is unconstitutional.

STATUTE AND CONSTITUTIONAL PROVISIONS INVOLVED

The statute involved in this case is the Anti-Picketing ordinance of Shasta County, adopted on April 4th, 1938, by the Board of Supervisors of said County. The complete text of the ordinance is set forth in the Record (Ex. "A," R. 68A). Those portions of the ordinance under which the appellant was charged and for violation of which he was convicted are as follows:

> "Section 2. It shall be unlawful for any person, in or upon any public street, highway, sidewalk, alley or other public place in the County of Shasta, State of California, to loiter in front of, or in the vicinity of, or to picket in front of, or in the vicinity of, or to carry, show or display any banner, transparency, badge or sign in front of, or in the vicinity of, any works, or factory, or any place of business or employment, for the purpose of inducing or influencing, or attempting to induce or influence . . . any person to refrain from doing or performing any service or labor in any works, factory, place of business or employment. . . ."

The provision of the Constitution involved is the Fourteenth Amendment of the Constitution of the United States and particularly Section 1 thereof.

STATEMENT

The proceedings in this case were instituted upon a criminal complaint filed on February 24th, 1939, charging the appellant and 29 other persons of having violated the Anti-Picketing ordinance (R. 1-2).

The accused were held on $100 bail and were committed in default of bail. The appellant was not released until March 2, 1939, on his own recognizance (R. 19).

A motion for separate trials was granted and the trial of the appellant was commenced on April 11th, 1939, before the Honorable Marie C. Mahon, the Justice's Court of Township Number Nine, County of Shasta (R. 20-21). The trial was continued to April 28th, 1939, when it was concluded and the court imposed judgment sentencing the appellant to pay a fine of twenty-five dollars, or twelve days in jail in lieu of the fine (R. 67).

The judgment was appealed and the appeal affirmed on November 14th, 1939, by the Superior Court of California for Shasta County (R. 72-73). The evidence at the hearing comes from the testimony of three persons, together with certain exhibits.

The prosecution offered only one witness, Alvin M. Cibula, the Assistant District Attorney of Shasta County. The defense, in addition to the appellant himself, had two witnesses: John Morgan and John Weise.

The facts are not in dispute since the appellant is ready to stand by the evidence put in by the prosecution

and the testimony of the defense was in no wise contradicted or rebutted.

The manner in which the picketing was carried on is described in the testimony of the prosecution's witness, Cibula. The circumstances of the labor dispute and the purpose of the picketing are described in the testimony of the defense witnesses. This evidence showed as follows:

Cibula testified that on the morning of February 24th, 1939, he went out to the Delta Tunnel project, which is located approximately 32 miles north of Redding (R. 22). The project was a construction job conducted by the United Concrete Pipe Corporation (hereinafter referred to as the Company) under contract with the United States Bureau of Reclamation, for the purpose of building a tunnel to relocate the lines of the South Pacific Railroad (R. 22, 34).

On that day the preliminary work was being done of clearing away brush and construction of wooden camps for the housing of the workers.

A main public highway known as U. S. Highway 99 runs near the project bearing generally north and south. The highway consists of a public right-of-way approximately 80 feet in width with a paved portion of 20 to 21 feet wide, and a gravelled portion 30 feet on each side of the paved road. The project was located east of the highway and fenced in by a wooden fence running parallel to the highway and located 50 to 100 feet from the easterly line of the paved part of the highway (R. 22-23).

When Cibula reached this spot about 7:15 A. M., workers were going through the gate and into the project grounds. At approximately 7:30 A. M. a group of 29

men in 5 or 6 automobiles came from the general direction of Redding, parked their cars on the gravelled portion of the highway which was not being used, got out of their cars, and started picketing. The picketing took place along the easterly line of the paved portion of the highway in the vicinity and in front of the Delta Tunnel project (R. 23).

The picketing, according to the prosecution's only witness, was carried out in the following manner:

The pickets walked by twos 5 or 6 feet apart for a distance of 50 to 100 feet north and south. All of the walking in connection with the picketing by the defendant and the others was done off the paved portion of the highway and on the gravelled portion of the road which is public property.

Some of the pickets were carrying signs so that they could be seen both by workers on the job and any person who might be going along on the highway in either direction (R. 25). The signs read as follows:

"Don't Be a Scab" (Exhibit b1, R. 68B);

"Shasta County Construction Workers Local 260" (Exhibit b2, R. 68C);

"CIO Picket Line" (Exhibit b3, R. 68D);

"This Job Unfair to CIO" (Exhibit b4, R. 68E).

When the picketing started there were some men working on the job and others arrived after the picketing started. Throughout the picketing there was continuous traffic on the highway (R. 25).

Upon cross-examination, Cibula testified (R. 26-28):

That the pickets were at all times peaceful;

Appellant John Carlson did not make any loud or any other noises;

He did not commit any disturbance of the peace;

He did not trespass on private property;

He did not threaten or intimidate or coerce any one;

He did not carry or possess any weapons;

He did not obstruct the traffic of persons and automobiles along the paved portion of the highway or anywhere else;

He was peaceable and orderly;

He did not commit any violence;

He did not molest or annoy anyone;

He did not riot or disturb the peace at any time during his picketing;

Neither he nor any of his associates molested or interfered physically otherwise with any person who wished to go or leave the job;

All of his conduct was simply for the purpose of persuading the workers to leave their jobs;

During the picketing persons and vehicles passed freely from the highway through the picket line to the project.

The description of the manner in which the picketing was carried out is confirmed by the testimony of Carlson himself and by one of his co-pickets, John Weise, and by an officer of the union of which Carlson was a member, John Morgan. These men brought out in more detail the circumstances of the dispute with the company which led to the peaceful picketing.

Carlson testified that he was a miner engaged in mining, quarry and trap tunnel work since 1923 and that he was a resident of Redding, California. Together with some 28 other men he had been hired on January 26 or

27th by the superintendent of the project (R. 30). Shortly after the construction job began, one Green, an organizer for the American Federation of Labor, came on to the job, talked to all of the miners in the presence of company foremen and on company time, and passed out buttons bearing the legend: "I am a member of the AFL" (R. 30-31).

As a result, when the work was shut down on February 2nd, 1939, because of weather conditions, the men discussed the question among themselves in groups of 7 to 10 during the noon hour and decided to join a union of their own choosing. The majority of them at one time or another had been members of the International Union of Mine, Mill and Smelter Workers, affiliated with the Congress of Industrial Organizations, hereinafter referred to as the Union (R. 30-31).[1]

The men decided that they would take a vote among themselves and as a result of the vote, 22 voted in favor of the Union, 5 did not vote at all, and 2 men, one an engineer and the other a truck driver, carried AFL cards. Thus there was a vote of 22 to 2, out of 29 employees on the job in favor of the Union. The men thereupon joined Local 260 of the Union (R. 32).

A committee of the Union requested the Company to bargain. The Company refused (R. 32).

The governor of California, through his executive secretary, called a conference of the Company and the Union at Sacramento and persuaded the Company to suspend operations in the meantime. The Company refused to change its position or negotiate in any way so

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[1] The Union has a special organizing committee called the Tunnel Construction Workers Organizing Committee engaged primarily in organizing tunnel construction workers. This work is of the same nature as hard rock mining for which its members are specially qualified. (R. 44)

that the negotiations for arbitration fell through (R. 39-40).

When the work was reopened on February 23rd, none of the men were called back to work. Instead, the Company hired a new set of men requiring them to belong to the AFL and each of the original men on the job was notified that he could come back to work only if he too joined the AFL. The men refused and instead commenced picketing. At the same time the Union filed charges and amended charges with the regional office of the National Labor Relations Board against the Company on the ground that the Company refused to bargain with the majority representative of its employees and had locked out the employees because they joined the Union (R. 33; Defendant's Exhibit 1 and 2, R. 69-71).

Carlson himself stated that he did not intimidate or coerce, commit any violent or disorderly act, or make any gesture or threat of intimidation, use any lewd, insulting or abusive language, carry any weapons, obstruct any persons or trucks going to or from the job; that the purpose of his picketing was to induce the men who were working on the job to leave it, to induce others who might be coming out to get a job to refuse it, and to give publicity to the fact that the Delta Tunnel project was unfair to organized labor (R. 36-37).

He further testified that the use of the banners was for the same purpose of persuasion and publicity, and that the pickets were on the gravelled portion of the highway and did not interfere with any traffic which moved on the paved portion. He himself was carrying the sign bearing the words:

"This Job Unfair to CIO" (R. 38; Ex. b4, 68E).

The witness John Weise was a co-worker of the appellant and Secretary of the Union, in charge of its books and records. His testimony affirmed that of Carlson to the effect that 19 or 20 of the men had signed applications for membership in the Union and designated it as their exclusive bargaining agency (R. 43).

Weise, upon recall to the stand, also testified that he knew of two instances of the actual effect of the picketing. In one case, a man who had been working on the job quit because of the peaceful picketing; and in the other, a man who was looking for work on the project, upon seeing the picket line and its signs decided not to take work on the project (R. 65).

John Morgan, the last witness for the defense, is an international representative of the Union.[2] He stated that in his official capacity, after the men had signed up in the Union, he talked over the telephone with Mr. Bell, the treasurer of the Company, and asked him to meet the Union Committee. Mr. Bell refused to do so, stating that he was going to deal with the AFL, and the fact that the men had freely chosen the Union made no difference to him (R. 44-46).

Morgan further testified that on subsequent occasions, the Union repeated its request for collective bargaining and was always turned down. As a consequence several union meetings were held prior to February 23rd, the date the work on the project was reopened. Discussion took place as to whether the picket line should be established, and it was decided to do so for the purpose of peacefully persuading the men on the job to quit

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[2] The term "International" is a usage of American labor unions indicating that the union has branches in Canada.

work and to notify the public that the job was unfair to the Union (R. 46-47).

Morgan explained in detailed the reasons why unions engage in picketing as the one peaceful method available to them to give publicity to the facts of their side of the controversy with an employer (R. 48-59).

In summary, Morgan's testimony pointed out that placards, picket lines and distribution of leaflets are the only practical methods open to unions to notify the public at large and to notify men who otherwise might become strikebreakers. He stated that he knew as a matter of his experience among workers that they will not scab on a job because it means practically "stealing the bread out of another worker's mouth"; that because of the expense involved in hiring halls and running advertisements in the newspapers and gaining time on the radio, unions are prevented from using the usual channels of communicating their facts to the public and to other workers. He said it was necessary to let the public know the facts because public opinion is important; that the employer is sometimes able to whip up so-called vigilante committees to support back-to-work movements; that the picket line serves as a necessary stimulant to the morale of the men giving them activity instead of the forced idleness brought on them by the strike and that it serves as an outlet for the feelings of the men and as the best safeguard against violence since they then have an opportunity to express themselves in a peaceful way.

It was further brought out on cross-examination of Morgan that the Union had been unable to secure any halls in the vicinity; that it did not have enough money to pay for advertisements or get radio time; and that the employer had been making full use of the local

newspapers; that these indictments of the men for picketing had been joined with indictments for conspiracies to violate the Anti-Picketing law and thereby making it a felony, forcing the picketing to cease and allowing the employer to win the strike (R. 56-63).

He pointed out further that the purpose of the picketing was necessary to inflict economic pressure upon the employer to compel him to deal with the men and that the fundamental issue at stake in this strike was the question of recognition of the Union, so that the men could go on to discuss wages, hours and working conditions and establish grievance and arbitration machinery to prevent strikes and shutdowns (R. 63-65).

SUMMARY OF ARGUMENT

I.

Peaceful picketing in public streets and places during a labor dispute over terms and conditions of employment and representation for purposes of collective bargaining is an exercise of civil liberties protected by the Constitution.

A. The act of peaceful picketing is an expression of opinion and the dissemination of information concerning a labor dispute. Upon the uncontroverted evidence, the picketing engaged in by the appellant consisted simply in walking back and forth upon a public highway in a peaceable manner, not interfering with any one, and bearing a placard which carried the words: "This Job Unfair to CIO."

B. The interest and motive behind the picketing was to improve the conditions of workers through collective bargaining and other concerted action for their mutual aid and protection. The record is clear that the picket-

ing in this case was for the purpose of obtaining recognition of the Union chosen by an overwhelming majority of the men; then to negotiate a contract for wages, hours and working conditions. The picketing was engaged in after the men had been locked out by the employer.

C. The effect or purpose of the picketing was to induce others to quit or to refrain from taking employment with the company, to win the support of the public and generally to publicize the Union's side of the dispute.

D. The act of peaceful picketing is therefore the exercise of the fundamental rights of freedom of speech, press and assembly. This proposition is based upon three grounds:

(1) Judicial decisions have specifically held that peaceful picketing is an exercise of civil liberties;

(2) Peaceful picketing has been specifically affirmed by public policy and approved by this Court;

(3) The act of picketing comes within the general definition of freedom of expression as laid down by this court.

It is settled beyond dispute that the Fourteenth Amendment, and particularly Section 1 thereof, protects the exercise of these rights against any abridgment by a state or municipal ordinance.

II.

The ordinance on its face and as construed and applied abridges fundamental civil liberties.

A. The ordinance makes picketing in whatever manner it is carried on unlawful and subject to criminal procedures and penalties. The ordinance thus operates

as a previous restraint upon the exercise of freedom of expression.

B. No substantial reasons can be advanced to support the validity of the ordinance.

1. The ordinance unlawfully prohibits peaceful picketing which in no manner can be held to be inconsistent with the maintenance of public comfort and convenience or with the preservation of the public peace. It violates each one of the requirements laid down by this Court to support valid regulations of the use of streets and public places for the exercise of civil liberties.

2. The ordinance unlawfully prohibits peaceful picketing which in no manner can be held to be obscene or offensive to public morals or advocating unlawful conduct. Both upon its face and as construed and applied, the ordinance violates the tests laid down by this Court for determining whether the legislative power may be used to prohibit picketing because of its unlawful nature.

The tests laid down by this Court are twofold and the ordinance fails to meet either of the tests.

(a) Publicizing the facts of a labor dispute does not advocate any unlawful means nor does it involve any clear or present danger of bringing about a substantive evil. It is simply unreasonable and arbitrary to suppose, as the ordinance alleges, that the use of picketing to induce men to quit work could directly result in a serious injury to the State. It is equally unreasonable and arbitrary to declare, as does the ordinance on its face, that the aim of unions to enroll members in Shasta County is a substantive evil which the County may prevent. To suppress the peaceful exercise of constitutional rights in order to prevent violence by others would reduce constitutional protection to a mere form of words.

(b) Publicizing the facts of a labor dispute is not a malicious or willful interference with the rights of others without any legal justification. It is by now fundamentally recognized that workers do have a legal interest in terms and conditions of employment and representation for purposes of collective bargaining to justify their exercise of constitutional rights. The ordinance can be declared valid as a protection of the rights of others against picketing only upon the ground that the exercise of fundamental civil liberties by workers is illegal because it results in an injury to the employer's property and business.

C. The ordinance is invalid because it is altogether vague and indefinite. It is not necessary to consider whether any part of the ordinance is inseparable from the rest because no part of it is free from this taint of illegality.

D. The ordinance denies the equal protection of the laws. It is a piece of crass and gross discrimination denying to workers the ordinary rights enjoyed by the employer.

ARGUMENT

I. PEACEFUL PICKETING ON PUBLIC STREETS AND PLACES DURING A LABOR DISPUTE OVER TERMS AND CONDITIONS OF EMPLOYMENT AND REPRESENTATION FOR PURPOSES OF COLLECTIVE BARGAINING IS AN EXERCISE OF CIVIL LIBERTIES PROTECTED BY THE CONSTITUTION.

The basic question in this case is whether the constitutional rights of the appellant have been denied. Upon this question depends the jurisdiction of this Court and

the decision it may make with respect to the validity of the challenged ordinance. It therefore becomes necessary to determine whether any Federal right is involved.

This determination can be made by answering the question whether the appellant was exercising any such right. It is our contention that there is only one answer which can be given to this question. The appellant was engaged in picketing. We can look to the ordinance and evidence in the case to define picketing.

A. The act of peaceful picketing is an expression of opinion and the dissemination of information concerning a labor dispute.

Upon the uncontroverted evidence, the picketing engaged in by the appellant consisted simply in walking back and forth upon the public highway in a peaceable manner, not interfering with anyone, and bearing a placard which carried the words: "This Job Unfair to CIO."

The ordinance defines picketing to be

> "in or upon any public street, highway, sidewalk, alley or other public place in the County of Shasta, State of California, to loiter in front of, or in the vicinity of, or to picket in front of or in the vicinity of, or to carry, show or display any banner, transparency, badge, or sign in front of, or in the vicinity of any works or factory or any place of business or employment" (Ex. A, R. 68A).

The witness for the prosecution described the picketing in this case as follows:

> "The picketing consisted of walking a distance of 50 to 100 feet in a general northerly direction, then turning around and retracing steps and con-

> tinuing as before . . . off the paved portion of the highway and on the gravelled portion of the right-of-way, that is, on public property . . . carrying signs that could be seen from all angles at some time or other . . . in a peaceable and orderly manner" (R. 23, 24, 26).

The picketing was defined by the appellant himself as follows:

> "It consisted simply of walking back and forth along the side of the paved portion of the highway . . . carrying a sign . . . about being unfair to the CIO. . . ." (R. 37-38).

Thus the bare physical description of what the men were doing is not in dispute. For the purposes of the ordinance in general and the facts of this case in particular, there is no question as to just what the act of picketing involved.

B. The interest and motive behind the picketing was to improve the condition of workers through collective bargaining and other concerted action for their mutual aid and protection.

The record is clear that the picketing in this case arose out of a bona fide labor dispute. Stripping the declaration of the ordinance of its characterizations, it alleges that picketing results from "disputes and differences between employers of labor, their employees, organized labor and between different groups and factions of employees." The ordinance further states that "one of the means now being employed by said unions" in their efforts to secure members "is the picketing of places of business in the County of Shasta" (Ex. A, R. 68A).

The evidence at the trial is indisputable that the appellant and his co-workers took to picketing because they wished to promote their attempt to secure collective bargaining in their work. Carlson testified upon cross-examination:

> "Q. . . . Wasn't it (the project) shut down because there was a dispute between the AFL and the CIO over the jurisdiction on that job, is that right?
>
> "A. Well, you see, the men who voted CIO never got back on our jobs, the company claimed it would only take men from the AFL. But that was after we took the vote. After we voted CIO, we were not allowed to work there any more. We were locked out of the job. Then the contractor arranged to have AFL men on the job, and the Governor got the contractor to remain shut down, but the arbitration fell through. So when the contractor opened up again with different men, not letting us have our jobs, why then we put the picket line on" (R. 40).

Morgan testified upon cross-examination:

> "Q. Were not the members of your Union, that is the twenty or twenty-two men that were dismissed as the record shows, were not they picketing for the purpose of having the United Concrete Pipe Corporation hire them back and recognize them and the Local Union 260 as the bargaining agent for all employees on the United Concrete job?
>
> "A. Yes. Local 260 and the men who were picketing, as I stated, did this for the purpose of first obtaining recognition of their union to represent them, and second and pursuant to this, negotiating a contract for wages, hours and conditions, at which time these men would return to work with union recognition and under union wages, union hours and union conditions" (R. 63).

C. The effect or purpose of the picketing was to induce others to quit or to refrain from taking employment with the company, to win the support of the public and generally to publicize the Union's side of the dispute.

The immediate purpose of the appellant and his coworkers is likewise beyond dispute. The ordinance itself defines the picketing which is prohibited as being "picketing for the purpose of inducing and influencing persons to refrain from doing or performing any service or labor in any place of employment or for the purpose of inducing or influencing any person to refrain from purchasing or using any goods or other articles manufactured therein."

The testimony again is clear as to these purposes of the picketing. The witness for the prosecution testified as follows:

> "Q. All of Carlson's conduct that fell under your observation was considered by you to be for the purpose of persuading the AFL workers to leave their jobs?
>
> "A. That was the impression that I gained" (R. 27).

Morgan testified:

> ". . . it was the intention of the Union to establish a peaceful picket line on the Delta project, and the purpose of the picket line was this. A two-fold purpose. First, by means of a peaceful picket line to advertise and show to the men that the Company had put to work on the job and who were therefore in a position of being strikebreakers, to advertise to them the fact that the job was unfair, and endeavoring in this manner to peacefully persuade these men not to work on that job. And the second purpose was to advertise the conditions of this

particular job to the public at large, to the American Federation of Labor people in general throughout the community, to the citizens generally of Shasta County, and in fact to the people of California generally, and specifically to the State administration" (R. 47).

D. The act of peaceful picketing is therefore the exercise of the fundamental rights of freedom of speech, press and assembly.

It seems to us indisputable as a matter of law that the act of picketing or the conduct of the appellant in this case as defined by the ordinance and shown by the record is nothing less than a concurrent exercise of fundamental rights of freedom of speech, press and assembly.

Under the decisions of this Court the act of picketing has been specifically held to be such an exercise of civil liberties; its motive and purpose has been established by Federal public policy approved by this Court; and in any event, picketing comes within the general definition of this Court as an expression of opinion for lawful purposes.

(1) Judicial decisions have specifically held that peaceful picketing is an exercise of civil liberties.

The recent *Leaflet Cases* involved four different city ordinances. (*Schneider v. New Jersey* and three other cases, 60 Sup. Ct. 146, 308 U. S. —). The ordinance of the City of Milwaukee prohibiting leaflet distributions was applied to a picket.

> "The petitioner who was acting as a picket stood in the street in front of a meat market and distributed to passing pedestrians, handbills which pertained to a labor dispute of the meat market, set forth the position of organized labor with respect to

the market and asked citizens to refrain from patronizing it" (60 Sup. Ct. at p. 148).

The ordinance was declared invalid and the conviction reversed because it abridged the "liberty of free speech."

In the case of *Senn v. Tile Layers Protective Union*, 301 U. S. 468-478, this Court said:

> "Members of a union might, without special statutory authorization by a State make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution."

In the case of *Hague v. CIO*, 307 U. S. 496, this Court enjoined the enforcement of three ordinances of the City of Jersey City under which Mayor Hague banned unions and their organizers and members during labor disputes and in the course of organizing activities from distributing leaflets, holding meetings and carrying placards or making public announcements on the streets of Jersey City. The record in that case, and the opinion of the courts below (25 F. Supp. 127 and 101 F. (2d) 774, substantially upheld by this Court) make it clear that the civil liberties protected by the injunction included peaceful picketing carried on by workers in the same circumstances as did the appellant in the case at bar. See, *Hague v. CIO*, Record on Appeal 1938, No. 651, pp. 767-8, 772, 1289, 1304-5.

The express recognition of the fact that picketing is an exercise of fundamental civil liberties has also been set forth in two recent decisions by highest State courts.

People v. Harris 104 Colo. 386, 91 P. (2d) 989;

Reno v. Second Judicial District Court (Nev.), 95 P. (2d) 994.

In both cases ordinances prohibiting picketing were declared invalid under the Federal guarantees. In the *Reno* case, the Nevada Supreme Court said:

> "The Colorado case (*People v. Harris*) is squarely in point and is buttressed with ample authority. It reflects the modern view that peaceful picketing is lawful and is immune from legislative interdiction by reason of constitutional guarantees" (95 P. (2d) at p. 1003).

(2) Peaceful picketing has been specifically affirmed by public policy and approved by this Court.

Peaceful picketing, in its motives and purposes, has been specifically established by the public policy of the United States embodied in the National Labor Relations Act which has been sustained by this Court as affirming fundamental rights. *NLRB v. Jones & Laughlin*, 301 U. S. 1, 33.

Section 7 of the National Labor Relations Act provides that (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C. Sec. 157):

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection."

Clearly the use of leaflets, the spoken word and meetings are necessary incidents to the exercise of the right of collective bargaining and are directly embraced within the meaning of the phrase "concerted activities for mutual aid and protection."

In the case of *Williams Coal Company, et al.*, 11 NLRB 579, 646, the National Labor Relations Board specifically held that peaceful picketing was an exercise

of the right to "engage in concerted activities for mutual aid and protection" as guaranteed by Section 7 of the Act.

It would thus seem to be clear that the acts of the defendant were an exercise of a privilege and immunity of Federal citizenship and a fundamental right.*

The act of picketing is likewise expressly favored by the public policy of the United States as established in the Norris-LaGuardia Anti-Injunction Act (Act of March 23, 1932, c. 90; 47 Stat. 70; 29 U. S. C., Sec. 101 et seq.)

The Federal Social Security Act refuses the grant of Federal subsidies to the administration of a state unemployment insurance law which would require workers to take work:

> "If the position offered is vacant due directly to a strike, lockout, or other labor dispute.
>
> "If as a condition of being employed the individual would be required to join a company union or resign from or refrain from joining any bona fide labor organization."
>
> (Int. Rev. Code as amended, Subchapter C, Sec. 1603 (a) (5) (A) (C) Act of Aug. 10, 1939, c. 666.)

Not only has the Federal law recognized the right to collective bargaining but California state law has done so likewise. Section 923 of the Labor Code of the State

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* In this case, it was not questioned upon the trial that the appellant was exercising rights guaranteed by the National Labor Relations Act. The Delta Tunnel project was for the purpose of relocating the main track of the Southern Pacific Railroad under a contract with the United States Bureau of Reclamation. (R. 34-35) Charges were filed with the National Labor Relations Board. (R. 42 Defendant's exhibits 1 and 2, R. 69-71). Sometime after this case was tried in the Justice's Court, the charges were dismissed by the National Labor Relations Board for lack of jurisdiction. In any event, the ordinance on its face applies to "any works, factory or place of business or employment" in Shasta County, whether or not it is subject to the National Labor Relations Act. Cf. opinions in *Hague v. CIO*, supra.

of California provides that workers shall have the right to bargain collectively and other concerted action for their mutual aid and protection.

This Court, before these laws were passed, recognized the imperative legality of concerted action for mutual aid and protection taken by workers, of which picketing is a necessary incident.

> *Amalgamated Utility Workers v. Consolidated Edison Co.* et al. (decided this term, 308 U. S. —)
>
> *American Foundries v. Tri-City Council*, 257 U. S. 184.

See, Magruder, *A Half Century of Legal Influence Upon the Development of Collective Bargaining.* (1937) 50 Harv. L. Rev. 1071.

(3) The act of picketing comes within the general definitions of freedom of expression.

The right to picket is included within the general definition of the term "liberty of expression" as laid down by this Court.

This Court has defined freedom of speech and press to embrace the right to

> "speak, write or circulate information or opinion." (*Leaflet Cases*, 60 Sup. Ct. p. 150)
>
> To the same effect see *Hague v. CIO*, 307 U. S. 496, 525; *Lovell v. City of Griffin*, 303 U. S. 444, 452.

The variety of situations embraced by the general concept of freedom of expression is illustrated by the *Leaflet Cases* which protected the following:

1. A picket in front of a meat market during the course of a labor dispute urging passersby not to patronize it.

2. A member of a religious sect handing out tracts of the society.
3. A person distributing notices of a protest meeting in connection with the administration of the state unemployment insurance.
4. A person distributing notices of a meeting to be held under the auspices of the Friends of Lincoln Brigade at which speakers would discuss the War in Spain.

There can be no question that the carrying of banners or signs is a form of liberty of expression. One of the ordinances in the Hague case declared invalid by this Court, like the Shasta County ordinances, forbade the carrying on any sidewalk or roadway, of any placard, banner or sign.

In the case of *Stromberg v. California*, 283 U. S. 359, the act of the appellant was that of raising a red flag. The display of the flag was treated as a form of freedom of speech and the California statute prohibiting such a display as a "sign, symbol, emblem or opposition to organized government" was held unconstitutional as a denial of freedom of speech.

Thus it is apparent that the act of the appellant is an exercise of freedom of speech, press and assembly. It is unnecessary to attempt to distinguish between the rights, since each of them is equally important and no one can be abridged any more than the other.

It is settled beyond dispute that the Fourteenth Amendment, and particularly Section One thereof, protect the exercise of these rights against any invasion, abridgment or unreasonable and arbitrary regulation by the states.

Leaflet Cases, 60 Sup. Ct. 146.
Hague v. CIO, 307 U. S. 496.

Lovell v. City of Griffin, 303 U. S. 444.
Herndon v. Lowry, 301 U. S. 242.
DeJonge v. Oregon, 299 U. S. 353
Grosjean v. American Press Company, 297 U. S. 233.
Stromberg v. California, 283 U. S. 359.
Whitney v. California, 274 U. S. 357.
Gitlow v. New York, 268 U. S. 652.

It is equally well established that the ordinance of Shasta County is state action within the meaning of the Fourteenth Amendment.

Leaflet Cases, supra.
Lovell v. City of Griffin, supra.

II. THE ORDINANCE ON ITS FACE AND AS CONSTRUED AND APPLIED ABRIDGES FUNDAMENTAL CIVIL LIBERTIES.

A. The ordinance makes picketing in whatever manner it is carried on unlawful and subject to criminal procedures and penalties.

It is obvious that the ordinance on its face and as construed and applied prohibits all picketing. The prosecution's witness testified that the men were arrested about an hour and a half after they first started to picket.

> "At approximately 7:30 a. m. . . . a group of 29 men . . . started picketing . . . At approximately ten minutes to nine, Sheriff Sublett of Shasta County arrived with some deputies and proceeded to place all of the pickets, including John Carlson, under arrest for picketing in violation of the ordinance." R. 23)

The minute entries of the Justice's court shows that the appellant was in jail for seven days before he was

released on his own recognizances. Three of his co-workers spent 19 days in jail. In addition, the local authorities resorted to indictments under criminal conspiracy provisions of the California Penal Code which is punishable as a felony by imprisonment in penitentiary. (Deering, Cal. Penal Code [1937] Secs. 17, 182) And this threat was sufficient to stop all picketing and cause the union to lose the strike.[1] John Morgan testified upon cross-examination:

> "Q. . . . Is it not true that the picketing was stopped by agreement between the union and the law enforcement agencies of Shasta County after a number of the union members had been indicted for a conspiracy to violate the ordinance in question?
>
> "A. . . . I would have to answer yes on second-hand information, Mr. Carr. I was not a party to the agreement, but I understand that such was the case. In any event, when the county authorities indicted the union leaders for a felony, that is, conspiracy to violate the anti-picketing ordinance, why then it became impossible to continue the picket line because we could not ask the workers to subject themselves to being charged with a felony, which carries a penitentiary sentence on conviction, and therefore we were obliged to give up picketing altogether. And this was directly the cause of our losing the dispute with the employer, this fact of not being able to maintain the economic pressure on the employer which results from maintaining a peaceful picket line." (R. 57)

It is thus evident that the ordinance operates as a prohibition of all picketing, whether peaceful or not. This is surely a previous restraint upon the exercise of

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[1] Action on the conspiracy indictments has been suspended pending the outcome of this case. One of the attorneys for the men, Richard Gladstein, was among those so indicted and also charged with violating the ordinance.

freedom of expression since it attempts to meet any abuse of the right by forbidding in advance even its lawful exercise.

Neat v. Minnesota, 283 U. S. 697.
Lovell v. City of Griffin, supra.
Chafee, *Freedom of Speech*.

B. No substantial reasons can be advanced to support the validity of the ordinance.

This Court has established the tests for reasonable limitations that may be imposed through legislation upon the exercise of freedom of speech, press or assembly. Such limitations can prohibit only those expressions of word or speech or assembles which are:

(a) Inconsistent with the maintenance of general comfort and convenience or the public peace.

(b) Obscene or offensive to public morals or advocate unlawful conduct.

A mere legislative declaration of policy or legalistic argument that certain restrictions upon civil liberties are justified under either of these tests does not suffice. This Court, in the recent *Leaflet Cases*, supra, set forth the cardinal principle that any valid regulation of civil liberties must be supported by substantial reasons.

> "This Court has characterized the freedom of speech and that of the press as fundamental personal rights and liberties. The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of the Constitution that exercise of the rights lies at the foundation of free government by free men. It stresses, as do many opinions of the Court, the importance of preventing the restrictions of enjoyment of these liberties.
>
> "In every case, therefore, where legislative abridgment of the rights is asserted, the courts

should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise or rights so vital to the maintenance of democratic institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights." (60 Sup. Ct. pp. 150-151.)

No substantial reasons have been or can be offered in support of the absolute prohibition of the Shasta County anti-picketing ordinance against peaceful picketing by workers engaged in the pursuit of collective bargaining.

(1) The ordinance unlawfully prohibits peaceful picketing which in no manner can be held to be inconsistent with the maintenance of general comfort and convenience or the preservation of the public peace.

The basic governing principle underlying the validity of any regulation of freedom of expression has been established by this court:

> "Although a municipality may enact regulations in the interest of public safety, health, welfare or convenience, these may not abridge the individual liberties secured by the constitution to those who wish to speak, write, print or circulate information or opinion." (*Leaflet Cases*, 60 Sup. Ct. 150.)

This ordinance, insofar as it attempts to regulate the manner of picketing, is an attempt to restrict the use of the streets and public places in Shasta County for picketing.

If we examine the three great contemporary opinions of this Court we shall see that this ordinance violates every one of the specific requirements laid down by this Court for a reasonable regulation of the use of the streets as a place for the exercise of fundamental civil liberties. These decisions establish, first, that the public streets and parks are lawful places for the exercise of civil liberties.

> "The streets are a natural and proper place for the dissemination of information and opinion." (*Leaflet Cases*, 60 Sup. Ct. 151)
>
> "Wherever the title of streets and parks may rest, they have immemorially been held in trust for the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights and liberties of citizens." (*Hague v. CIO*, 307 U. S. at p. 515)

These decisions establish, second, that all of the streets and public places must be open and the local authorities may not cut off the right to exercise it in some places on the excuse that it may be exercised elsewhere. Thus it said in the *Leaflet Cases*:

> "It is suggested that the Los Angeles and Worcester ordinances are valid because their operation is limited to streets and alleys and leaves persons free to distribute printed matter in other public places. But, as we have said, the streets are natural and proper places for the dissemination of information and opinion; and one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place." (60 Sup. Ct. at pp. 151-152)

In the same case the ordinance of the Town of Irvington attempted to prohibit the distribution of leaflets from house to house. The court struck down this restriction, saying:

> "perhaps the most effective way of bringing them [pamphlets] to the notice of individuals is their distribution at the homes of the people." (*Leaflet Cases*, 60 Sup. Ct. at p. 152)

Hence it is clear that the attempt of the Shasta County ordinance to prohibit picketing on public streets *only* in or near the employer's place of business is invalid.

These decisions establish, third, that the ordinance may not prohibit the peaceful exercise of civil liberties on the public streets as a means of maintaining general comfort and convenience or preserving public order. Thus it said in the *Lovell* case:

> "The ordinance is comprehensive with respect to the method of distribution. It covers every sort of circulation 'either by hand or otherwise.' There is this no restriction in its application with respect to time or place. It is not limited to ways which might be regarded as inconsistent with the maintenance of public order, or as involving disorderly conduct, the molestation of the inhabitants, or the misuse or littering of the streets. The ordinance prohibits the distribution of literature of any kind at any time, at any place, and in any manner without a permit from the City Manager." (303 U. S. at p. 451)

In the *Leaflet Cases*, an attempt was made to justify the prohibitions on the ground that they were necessary in order to prevent littering of the streets. But said the Court:

> "We are of opinion that the purpose to keep the streets clean and of good appearance is insufficient

to justify an ordinance which prohibits a person rightfully on a public street from handing literature to one willing to receive it. Any burden imposed upon the city authorities in cleaning and caring for the streets as an indirect consequence of such distribution results from the constitutional protection of the freedom of speech and press. This constitutional protection does not deprive a city of all power to prevent street littering. There are obvious methods of preventing littering. Amongst these is the punishment of those who actually throw papers on the streets." (60 Sup. Ct. at p. 151)

In the *Hague* case the argument was made that the Hague ordinance prohibiting street meetings was necessary in order to prevent breaches of peace. But said the Court:

"We think the court below was right in holding the ordinance quoted in Note 1 void upon its face. It does not make comfort or convenience in the use of streets or parks the standard of official action. It enables the Director of Safety to refuse a permit on his mere opinion that such refusal will prevent 'riots, disturbances and disorderly assemblage.' It can thus, as the record discloses, be made the instrument of arbitrary suppression of free expression of views on national affairs for the prohibition of all speaking will undoubtedly 'prevent' such eventualities. But uncontrolled official suppression of the privilege cannot be made a substitute for the duty to maintain order in connection with the exercise of the right." (307 U. S. at p. 514)

In the light of this requirement, the Shasta County ordinance must be deemed unconstitutional insofar as it attempts to prohibit peaceful picketing simply because its declaration alleges that picketing

"will thereby agitate the peace of mind of the people of the County of Shasta, and will foment resistance to said union activities, and will bring about a con-

> dition of open physical violence and a state of riot and uncontrollable mob action which will endanger the lives, health, property, comfort and peace of mind of all the people and citizens of the County of Shasta." (Ex. A. R. 64A)

Nor can the mere terminology of the ordinance that picketing is

> "for the purpose of intimidating, threatening, or coercing or attempting to intimidate, threaten or coerce."

make all such picketing in fact intimidating, threatening or coercing.

It is impossible to distinguish the ordinances which were declared invalid in the three recent cases from the ordinance in this case. The ingenuous argument of the District Attorney that the ordinance does not forbid persons from distributing leaflets in front of the place of business, but merely prevents picketing, will not suffice.

The fact is, as demonstrated by the record herein, that it was necessary for the appellant and his fellow workers to bear signs in view of the circumstances. The picketing was being conducted upon a highway with automobiles whizzing by so that it would have been impossible to hand out leaflets to passersby. Moreover, the men coming to and from work and on the job would see a sign where they might not take a leaflet or hold on to it after they had gotten inside of the Project.

The ordinance cannot, therefore, be justified as a reasonable regulation of the manner of exercising fundamental civil liberties.

(2) The ordinance unlawfully prohibits peaceful picketing which in no manner can be held to be obscene or offensive to public morals or advocating unlawful conduct.

The question which we now raise is whether the Shasta County authorities may constitutionally determine in the exercise of their legislative power that picketing is a form of expression that must be condemned because of the unlawful nature of the purposes or objects which it expresses. We believe that the answer to this question depends upon the application of two tests:

(a) whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about substantial evils which the county has a right to prevent.

(b) whether the words used constitute a malicious and willful interference without any legal justification with the rights of private individuals.

The ordinance in its declaration of policy seeks to describe certain substantive evils which the nature of picketing allegedly brings about. The declaration of policy states that picketing will "agitate the peace of mind of the people of Shasta County" and "foment resistance" bringing about a condition of public disorder.

Under the terms of the ordinance, there are three purposes for which peaceful picketing is forbidden: (1) to influence or induce persons to quit work or refrain from taking a job, (2) to influence or induce persons to refrain from purchasing or using goods manufactured by the company, and (3) to threaten, intimidate or coerce anyone who is working or seeking to obtain work.

The complaint in this case alleged that the appellant violated Section 2 of the ordinance. The evidence in the case went to all parts of the ordinance. It follows, therefore, that if any one of the purposes which the

ordinance on its face condemns is lawful, or if the purpose of the picketing as shown by the evidence was lawful, then the ordinance on its face and as construed and applied in this case must be declared invalid.

Herndon v. Lowry, supra.
DeJonge v. Oregon, supra.
Stromberg v. California, supra.
Whitney v. California, supra.
Fiske v. Kansas, 274 U. S. 380.

(a) Publicizing the facts of a labor dispute does not advocate any unlawful means nor does it involve any clear and present danger of bringing about a substantive evil.

We have argued in a previous portion of this brief that peaceful picketing in pursuit of the right to collective bargaining is a lawful activity. On the basis of this contention we submit that publicizing the facts of a labor dispute through peaceful picketing can in nowise be held to involve any clear and present danger of bringing about a substantive evil that Shasta County had a right to prevent.

The standard required by this Court was laid down by Mr. Justice Holmes in the Schenck case:

> "The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has the right to prevent. It is a question of proximity and degree." (*Schenck v. United States*, 249 U. S. 47, 52)

This standard was reaffirmed by this Court in the *Herndon* and *DeJonge* cases.

Herndon v. Lowry, 301 U. S. 242, 257.
DeJonge v. Oregon, 299 U. S. 353, 365.

The eloquent elaboration of this safeguard of constitutional liberties was made by Mr. Justice Brandeis in his concurring opinion in the *Whitney* case, supra. He wrote:

> "That it is hazardous to discourage thought, hope and imagination, that fear breeds repression, that repression breeds hate, that hate menaces a stable government, that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies, and that the fitting remedy for evil counsels is good ones.
>
> * * *
>
> It is therefore always open to Americans to challenge a law abridging free speech and assembly by showing there was no emergency justifying it.
>
> * * *
>
> Prohibition of free speech and assembly is a measure so stringent that it would be inappropriate as the means for averting a relatively trivial harm to society.
>
> * * *
>
> The fact that speech is likely to result in some violence or in destruction of property is not enough to justify its suppression. There must be the probability of serious injury to the state.
>
> * * *
>
> The legislative declaration, like the fact that the statute was passed and was sustained by the highest court of the state merely creates a rebuttable presumption that these conditions have been satisfied."
>
> (274 U. S. 375, 377, 378, 379)

On its face, this ordinance fails to meet this standard. It is simply unreasonable and arbitrary to suppose that the use of picketing to induce men to quit work could directly result in a serious injury to the State. It is equally unreasonable and arbitrary to declare that the

aim of unions to enroll members in Shasta County is a substantive evil which the county may prevent.

The ordinance gives itself away when it declares that picketing will foment resistance and bring about a condition of physical violence and mob action. The danger to the state arises not from the picket line but from the vigilantes who would suppress the picket line by force and violence. To forfend this danger, the law of Shasta County steps in to stop, not the lawless vigilante mob, but the peaceful pickets.

But if we were for a moment to accept the ordinance on its face, the conviction of the appellant upon the facts will not stand the light of Brandeis' opinion in the Whitney case. The legislative declaration and the opinion of the State court sustaining it is only a rebuttable presumption. The appellant's challenge on the record shows that none of the conditions invoked by the legislature have in fact been satisfied. At every point, on every issue, the presumption of the ordinance is rebutted by undisputed evidence.

The workers who joined the nationally affiliated union were not "satisfied with their employment." They joined the union freely of their own free will.

They were not "required to go on strike" to meet "the dictates of the union." They were locked out by the employer because they chose their own union.

They decided to picket as their only means of expressing their side of the dispute with their employer.

The picketing was entirely peaceful. No one was coerced, put in fear, no act of violence or threat of violence was committed.

We will not concede for the purpose of argument that even if a serious danger of a state of riot and uncontrol-

lable mob violence arising from resistance to the union were shown, it would be any justification. It was the duty of the city to clean up the streets or arrest those who dropped the leaflets and not the leaflet distributors in the Leaflet Cases. It was the duty of Mayor Hague to suppress any disorder that might occur at CIO meetings in Jersey City, and not the meetings. It is the duty of Shasta County officials to control mob violence, not to suppress picketing. If they will not, they are guilty of a federal crime., *Civil Rights Statutes,* Act of Mar. 1, 1875, c. 114, Sec. 3, 18 Stat. 336, 8 U. S. C. Sec. 45.

In the case of *Near v. Minnesota,* 283 U. S. 697, the statute sought to suppress any publication of scandalous and defamatory matters. The newspaper publisher convicted under it had indulged in the most vicious kind of attacks on law-abiding citizens of the community. It was argued that the conviction was justified because his attacks were so false and vicious they incited his victims to violence. But said this Court:

> "If this consideration warranted legislative interference with the initial freedom of publication, the constitutional protection would be reduced to a mere form of words." (p. 722)

Indeed, one of the reasons why the Union of which Carlson was a member carried on picketing was to prevent the rise of hostile public opinion that would lead to violence against the Union members. So Morgan testified:

> "As a matter of fact, I would say that not only is it important to win over the opinion and sympathy of the working man generally, but also the opinion and sympathy of the businessman and the general citizenry in the county. We know from experience that where unions are unable to impress

the justice of their case on the community at large, and in some cases where employers have whipped up hysteria through falsifying the issues, that union men have been very badly treated through the formation of so-called 'citizens' groups' and back-to-work movements, and even in some cases vigilante movements. In the United Concrete situation we felt that public opinion was a very important factor on the question of whether or not we would win." (R. 51)

The issues in this case can be put in terms of this statement by Morgan and the declaration of policy in the ordinance. Which is the way to solve conflicts in society—by suppression of civil liberties or by free exercise of them. We think the "path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies."

The authorities of Shasta County have expressed their "fears" and chosen the "path of repression."

Even if there were no chance that the Union could persuade anyone in Shasta County to its side, then we must remember the dissenting caution of Mr. Justice Holmes in the *Abrams* case:

> "We should be eternally vigilant against the attempts to check the expressions of opinion that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country." (250 U. S. at p. 630)

The standard required by this Court to justify a curb on ideas was relaxed during the last World War. In the case of *Gitlow v. New York*, 268 U. S. 652, over the vehement dissent of Justices Holmes and Brandeis,

this Court sustained a conviction for the mere advocacy of resistance to war by unlawful means. It said:

> "Utterances advocating the overthrow of organized government by force, violence and unlawful means are so inimical to general welfare and involve such danger of substantive evil that they may be penalized in the exercise of its police power." (p. 669)

In each of the other Espionage cases arising out of the 1917 Act, this Court found that there was at least an advocacy of unlawful means.

Abrams v. United States, 250 U. S. 616.
Schaeffer v. United States, 251 U. S. 466.
Pierce v. United States, 252 U. S. 239.
Chafee, *Freedom of Speech*.

And similarly in the case of the California Anti-Syndicalism law. *Whitney v. California*, 274 U. S. 352.

But the Shasta County ordinance does not require that pickets by their conduct or demeanor must urge force and violence or other unlawful means. Mere persuasion for the purpose of "influencing or inducing" is sufficient to make picketing unlawful.

(b) Publicizing the facts of a labor dispute is not a malicious and willful interference with the rights of others without any legal justification.

It may be argued here, as the ordinance itself implies, that picketing must be prohibited as an unlawful interference with the rights or employers and workers who have not joined the cause of the Union. This is to say that the authority of the state is wrapped about the private interests of these parties to a labor dispute, to strike down the exercise of civil liberties by the Union. We are met at the threshold of this supposed justifica-

tion of the ordinance by the words of Mr. Justice Brandeis:

> "The fact that speech is likely to result in some violence or in destruction of property is not enough to justify its suppression. There must be the probability of serious injury to the State."
>
> (*Whitney v. California*, 274 U. S. at p. 378)

However, reference may be made to the cases in which this Court has sustained prohibitions in whole or in part against the union's publicity of the facts of a labor dispute.

Loewe v. Lawlor, 208 U. S. 274.
Gompers v. Bucks Stove, 221 U. S. 418.
Duplex Printing Press v. Deering, 254 U. S. 443.
American Foundries v. Tri-Cities Council, 257 U. S. 184.
Bedford Stone Co. v. Journeymen and Stone Cutters Association, 274 U. S. 37.
Dorchy v. Kansas, 272 U. S. 306.

But these cases are to be distinguished upon three grounds.

First. They are each, except for the *Dorchy* case, injunction cases involving a conflict of the private rights between employer on the one hand and the union on the other hand. The Court considered the issues in each case, weighing the conflict of interests involved, and then laid down prohibitions upon the future conduct of the union and imposed damages for the injuries which it inflicted in the past.

Thus in the *Tri-Cities case*, the use of two pickets at each factory gate was held to be reasonable under the circumstances. The Court emphasized the fact that:

> "each case must turn on its own circumstances."

The Shasta County ordinance prohibits all picketing under all circumstances. Its arbitrary fiat loses the possible validity which the particular facts in the injunction cases may give to the general language of the opinions in those cases.

Second. In four of the cases, the Court found that the union was engaged in unlawful purposes, namely, a restraint of trade and a boycott of the employers' goods in interstate commerce. Consequently, whatever means it used was for an unlawful purpose.

So in the *Duplex* case, the Court said:

> "It is settled by these decisions that such a restraint produced by peaceable persuasion is as much within the prohibition (of the antitrust laws) as one accompanied by force or threats of force." (254 U. S. at pp. 467-468)

In the case at bar, no question of so-called "secondary boycotts" is involved.

See, *Secondary Boycotts in Labor Disputes* (1938) 6 U. J. A. Bull. 83.

Third. Each of these cases and the whole host of judicial precedents that may be arrayed to support curbs upon picketing must be distinguished upon the ground that in them the Court found that the union had no justifiable interest to support its interference with the employer's business.

Thus in the *Gompers* case, the Court said:

> "But we will not enter upon a discussion of the constitutional question raised, for the general provision of the injunction did not in terms restrain any form of publication. The defendant's attack on this part of the injunction raises no question as to an abridgment of free speech, but involves the

power of a court of equity to enjoin the defendants from continuing a boycott which, by words and signals, printed or spoken, caused or threatened irreparable damage." (221 U. S. at pp. 436-437)

And in the case of *Dorchy v. Kansas*, it was held that a strike

> ". . . to collect a stale claim due to a fellow member of the union who was formerly employed is not a permissible purpose." (272 U. S. at p. 311)

The dictum of Mr. Justice Brandeis in that case is frequently cited: (p. 311)

> "Neither the common law nor the Fourteenth Amendment confers the absolute right to strike. Compare, *Aikens v. Wisconsin*, 195 U. S. 194, 204-5"

We do not suppose that any right in society is absolute. The reference by Mr. Justice Brandeis to the *Aikens* case makes it clear that his dictum meant simply that a malicious and willful exercise of a right unsupported by any justifiable interest can be made unlawful.

But we submit that it is now fundamentally recognized that workers do have a legal interest in terms and conditions of employment and representation for purposes of collective bargaining to justify their exercise of constitutional rights. Surely in this case the appellant and his fellow workers, who were locked out after they freely joined a union with which the employer refused to deal, have an interest in the job which justifies their picketing.

This contemporary development which makes inapplicable the previous decisions is perhaps best stated in the opinion of this Court in the case of *New Negro Alliance v. Sanitary Grocery*, 303 U. S. 552. There this

Court sustained the picketing by members of the Negro race against a store which refused to employ Negroes on the ground that the dispute came within the terms of the Norris-LaGuardia Act. It said:

> "It was intended that peaceful and orderly dissemination of information by those defined as persons interested in a labor dispute concerning terms and conditions of employment in an industry or plant or a place of business should be lawful; that, short of fraud, breach of the peace, violence, or conduct otherwise unlawful, those having a direct or indirect interest in such terms and conditions of employment should be at liberty to advertise and disseminate facts and information with respect to terms and conditions of employment, and peacefully to persuade others to concur in their views respecting an employer's practices." (pp. 562-563)

It is significant to note that the House report on the Norris-LaGuardia Act specifically referred to the limitations on picketing imposed in the *Tri-Cities* case as being "responsible in part for the agitation for the passage of the law."

> "In the case of the *American Steel Foundries v. Tri-City Central Trades Council, supra,* there was a strike, and, of course, a picket line. There was practically no fraud or violence, but the persistent giving of publicity to the facts involved in the dispute and the persistent advising of other persons without fraud or violence not to work for the employer. It was thought by the labor union that Section 20 (Clayton Act) prohibited an injunction against such acts, but the Supreme Court held that such acts could be enjoined and, therefore, the legislation proposed specifically restricts the courts in this respect unless 'the acts are accompanied by fraud or violence.'" (The House Report, No. 669, 72d Cong. 1st Sess.)

In the Senate report it was stated:

> "The first knowledge which the defendant has is service of notice upon him that the restraining order has already been issued. Before he is given an opportunity to be heard, he is enjoined, and in many cases, he is restrained from doing acts and things which seriously interfere with and sometimes completely deny, his fundamental right of liberty of action, which belongs to every free citizen. That there have been abuses of judicial power in granting injunctions is hardly open to discussion." (The Senate Report, No. 163, 72d Cong. 1st Sess.)

This ordinance can be declared valid as a protection of the rights of others against picketing only upon the ground that the exercise of fundamental civil liberties by workers is illegal because it results in an injury to the employer's property and business.

But this Court has said of these fundamental civil liberties:

> "This Court has characterized the freedom of speech and that of the press as fundamental personal rights and liberties. The phrase is not an empty one and was not lightly used. It reflects the belief of the framers of the Constitution that exercise of the rights lies at the foundation of free government by free men. It stresses, as do many opinions of this Court, the importance of preventing the restriction of enjoyment of these liberties." (*Leaflet Cases*, 60 Sup. Ct. at pp. 150-151)

To declare this ordinance valid would make a mockery of these rights.

C. The ordinance is invalid because it is altogether vague and indefinite.

This Court has frequently stricken down laws restricting the exercise of civil liberties on the ground that

they are vague and indefinite. When it does so it is because the statute in question prohibits the exercise of constitutional rights in a peaceful manner for lawful purposes as well as the unlawful exercise of those rights for unlawful purposes.

Fiske v. Kansas, supra.
Herndon v. Lowry, supra.
DeJonge v. Oregon, supra.
Stromberg v. Carlson, supra.

Thus in the *Herndon* case, the Court said: (p. 259)

> "Where a statute is so vague and uncertain as to make criminal an utterance or an act which may be innocently said or done with no intent to induce resort to violence, or, on the other hand, may be said or done with a purpose violently to subvert government, a conviction under such a law cannot be sustained."

It is not necessary to consider whether any part of this ordinance is inseparable from the rest because no part of it is free of this taint of illegality.

The prohibition against making loud or unusual noises, and against loitering are completely vague and indefinite, and arbitrary in their fiat.

Territory v. Anduha, 48 F. (2d) 171.

In the *Anduha* case the Court declared invalid an ordinance of the Hawaiian government making it a criminal offense to loiter or idle upon any public street or highway on the ground that it was vague and arbitrary.

The portions of the ordinance which prohibit picketing for the purpose of intimidating, threatening or co-

ercing are equally vague and indefinite. In English labor history, at the turn of the century the House of Lords decided the case of *Quinn v. Leatham* [1901] A. C. 495. There a union threatened a strike against a customer of an employer who refused to hire union men. The English court, in its opinion, condemned by blanket decree all "intimidation, molestation, and obstruction." The consequences of this decision are ably set forth in the learned article by Rothschild, *Government Regulation of Trade Unions in Great Britain*, 38 Col. L. Rev. 1, 1336. Lord Haldane, who had himself argued the case for the employer, stated:

> "I will defy the Attorney General or any other lawyer to tell what the position of those who have to conduct a strike is at the present time. The effect of this judgment . . . has been to make it an impossibility to conduct a peaceable strike in a legal fashion." (108 Parl. Deb. 4th Ser. 1902, 320.)

The Attorney General, Sir John Walton, said of this ban:

> "A scope has been given to the law of conspiracy so loose and so wide that it is impossible to indicate beforehand what may be the legal character of the conduct of these organizations, and which is determined by the ex post facto decision of a legal tribunal . . . . you have an interference with the policy of these unions carried out by themselves with a view to advancing their own interests because judicial opinion considered that the advancement of those interests is unfavorable to the interests of the community. . . . If the law remained as it was now . . . there was absolutely no test in Heaven and earth, except the opinion of the particular person who was asked to determine whether the object of the combination was lawful or unlawful." (154 Parl. Deb. 4th Ser. 1906, 1295, 1300; 162 Parl. Deb. 4th Ser. 1906, 156.) (See Rothschild, op. cit. *supra*, p. 1339.)

The challenge of these great lawyers is present in the case at bar; just what are the things that workers in a union during a labor dispute may or may not do under the Shasta County Anti-Picketing law.

The force and effect of this Court's decisions in the *Herndon* and *DeJonge* cases cannot be avoided. In unmistakable language, this Court stated (we quote from the *Herndon* case):

> "The statute as construed and applied amounts merely to a dragnet which may enmesh anyone who agitates for a change of government if a jury can be persuaded that he ought to have foreseen his words would have some effect on the future conduct of others. No reasonably ascertainable standard of guilt is prescribed. So vague and indeterminate are the boundaries thus set to the freedom of speech and assembly that the law necessarily violates the guarantees of liberty embodied in the Fourteenth Amendment" (301 U. S. pp. 263-264).

The Shasta County Anti-Picketing ordinance is a dragnet which may enmesh anyone who agitates for a change in employer-employee relations if a court or jury can be persuaded that he ought to have foreseen that his conduct would have some effect on the future conduct of others and cause them to think themselves intimidated, coerced or threatened.

The Shasta County ordinance does not define what intimidation, coercion, or threats may be except to say that the act of picketing in itself has such an effect.

It is by now clear that the unlawfulness of any threat depends upon what is being threatened and that phrases such as "intimidation" or "coercion" are mere question-begging epithets. *Levering & Garrigues v. Morrin*, 71 F. (2d) 274 cert. den. 293 U. S. 595.

As Mr. Justice Holmes said in the case of *Vegelahn v. Guntner*, 167 Mass. 92, 107, 44 N. E. 1077, 1085.

> "As a general rule, even if subject to some exception, what you may do in a certain event you may threaten to do—that is, give warning of your intention to do in that event, and thus allow the other person the chance of avoiding the consequence."

The English Lord Scrutton in the case of *Wade & DeFreville Ltd. v. Motor Trade Assn.* (1921), 3 K. B. 40, at p. 69, confirmed this opinion when he said:

> "I respectfully concur on this point with the admirable judgment of Holmes, J., in *Vegelahn v. Guntner* where he remarks that the unlawfulness of 'threats' depends on what you 'threaten' and of 'compulsion' on how you 'compel' . . . . the discussion of this question would be much more lucid if the disputants would observe certain simple rules. First, to avoid question-begging epithets, such as 'boycotting,' 'ostracism' . . . 'coercion' and the like. Secondly, when they use the word 'maliciously' to say in what sense they use it."

It may be that the decisions in the old injunction cases can be supported upon one ground—an injunction case brings before a court a specific situation and it may be said the Court's decree weighs the conflicting interests and then lays down the limits for future allowable activity by the union. But a criminal statute which seeks to embody the general language of a particular case as a blanket prohibition in all cases loses the particularity that may save the decision and becomes an arbitrary and vague command under which workers must act at their peril.

Like the statutes in the *Herndon* case, in the *DeJonge* case, and the ordinances in the *Hague* and *Leaflet* cases,

the Shasta County Anti-Picketing ordinance must fall as altogether vague and indefinite, providing no ascertainable standard of lawful and unlawful conduct.

D. The Ordinance Denies Equal Protection of the Laws.

The uncontradicted testimony in this case shows that the employer in the case had complete and free access to all available means of communication and expression of opinion on controversial issues between himself and the Union. (R. 58)

The Union on the other hand did not have the funds to advertise in the newspaper or to get radio time and in fact no public hall was available even if it had funds. (R. 59)

In addition to the evidence in this particular case, the ordinance on its face manifestly applies only to workers.

There is nothing in the ordinance nor is there any other law in Shasta County or California which in any way restricts or abridges the employer's freedom of speech with respect to the mere dissemination of information concerning a labor dispute.

We do not see how it is possible to evade the objection that this law therefore is nothing short of a crass and gross piece of discrimination in denying to workers on strike the ordinary rights enjoyed by the employer.

Yick Wo v. Hopkins, 118 U. S. 356.

Ex Parte Lerner, 281 Mo. 18, 218 S. W. 33.

III. CONCLUSION

It is respectfully submitted that peaceful picketing in public streets and places during a labor dispute over terms and conditions of employment and representation for purposes of collective bargaining is an exercise of fundamental civil liberties protected by the Federal Constitution; that the Shasta County Anti-Picketing ordinance on its face and as construed and applied abridges the exercise of these liberties; and that a decree should be entered declaring the ordinance invalid and reversing the judgment below.

LEE PRESSMAN,
JOSEPH KOVNER,
ANTHONY WAYNE SMITH,
Washington, D. C.

RICHARD GLADSTEIN,
AUBREY GROSSMAN,
BENJAMIN MARGOLIS,
San Francisco, Calif.

Attorneys for Appellant.

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CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 667

JOHN CARLSON,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SHASTA.

MOTION FOR LEAVE TO FILE STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS AND STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS.

LAURENCE W. CARR,
District Attorney of Shasta County,
Counsel for Appellee.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 667

JOHN CARLSON,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

APPLICATION FOR SPECIAL PERMISSION TO FILE NOTICE OF MOTION, MOTION TO DISMISS APPEAL, AND BRIEF OF APPELLEE IN OPPOSITION TO APPELLANT'S PETITION FOR APPEAL AND STATEMENT AS TO JURISDICTION.

To the Honorable Supreme Court of the United States:

STATE OF CALIFORNIA,
County of Shasta, ss:

LAURENCE W. CARR, being duly sworn, deposes and says: That he is a citizen of the United States, over the age of twenty-one years, and that:

Applicant hereby applies for and prays that this Honorable Court may grant special permission to the said applicant to file with this Honorable Court "Notice of Motion, Motion to Dismiss Appeal, and Brief of Appellee in Opposition to Appellant's Petition for Appeal and Statement as to Jurisdiction" in the above entitled action. The said "Notice of Motion, Motion to Dismiss Appeal, and Brief of Appellee in Opposition to Appellant's Petition for Appeal and Statement as to Jurisdiction" has been heretofore

mailed to the Clerk of this Honorable Court. Because the said document was due on the 23rd day of January, 1940, and sufficient time was not available to the applicant to prepare and mail the within application with the said document, it may now appear that the applicant seeks to circumvent the rules of this Court.

The within application is therefore filed in order to make clear that the applicant herein has full regard for the rules and high standards of admission required for admission to practice before this Court, and to preclude any possibility of the applicant being adjudged in contempt for any wilful violation of the rules.

This application is necessitated, however, by unusual circumstances. Applicant is not a member of the Bar of this Court and has not been admitted to the highest court of any American Jurisdiction for a length of time sufficient to make him eligible for admission to said Bar. Applicant is the duly elected and qualified District Attorney of the County of Shasta, State of California. As such, applicant has been advised by the Attorney General of California that the matter of enforcing and sustaining county ordinances is purely a county matter and the officer charged with the duty of so doing is the District Attorney of said county. The laws of California preclude the District Attorney or the county from hiring special counsel to prosecute criminal cases.

Gibson v. *County of Sacramento*, 37 Cal. App. 523 at 531;
Conklin v. *Woody*, 33 Cal. App. 165 P. 973;
County of Modoc v. *Spencer*, 103 Cal. 498 37 P. 483.

The above entitled action is a criminal prosecution, for a violation of a county ordinance of said County of Shasta. It is, therefore, incumbent upon the applicant to represent the State. It appears then that the only other way in

which the State may be allowed to file the document heretofore mentioned would be to secure the services of some interested member of the Bar of this Court, without compensation. An effort has been made to do so. The two members of the Bar contacted by the applicant, were unwilling to take sides against the labor organization, of which the defendant was a member, as a gratuitous undertaking. It appears that it would be difficult to secure the gratuitous service of any member of the Bar of this Court, except, perhaps, a partisan, opposed to said labor organization. Applicant feels that to allow the injection of any partisanship into a criminal prosecution would be a dereliction of duty.

In accordance with Rule 2, Subdivision 2, of the revised rules of the Supreme Court of the United States, of February 27, 1939, the applicant herein, with the exception of requirement (1) sets forth the information required of regular applicants for admission to the Bar of this Honorable Court and certifies that:

(1) He was born at Redding, California, on the 12th day of June, 1912.

(2) His father's name is Francis Carr, and his mother's name is Mary A. Carr, both of Redding, California.

(3) He resides at 2005 Court Street in the City of Redding, State of California, and has his offices in the Shasta County Court House, in the said City of Redding.

(4) He was admitted to the United States Court of Appeals of the District of Columbia on the 7th day of June, 1937, having been admitted to the District Court of the District of Columbia on the 13th day of October, 1936. He was admitted to the Supreme Court of California on the 9th day of November, 1937.

(5) He held himself out as a practitioner of the law in the City of Washington, District of Columbia, from his

place of residence from the 13th day of October, 1936 to the 15th day of June, 1937.

(6) He has, since his admission to the Bar of this State of California on the 9th day of November, 1937, engaged in the practice of the law in the City of Redding, State of California.

(7) He has never been reprimanded by any court concerning his conduct or fitness as a member of the Bar.

(8) He has taken steps to have forwarded to this Court, two signed statements of members of the Bar of this Court, not related to him, and who are resident practitioners within the State of California.

A certified copy of the Certificate of Election and Oath of Office of the said applicant as District Attorney of Shasta County, is attached hereto and made a part hereof, and marked, "Exhibit 1".

Applicant is cognizant of the extraordinary nature of the request made herein. However, applicant feels that in view of the foregoing, it is his solemn duty, as the representative of the People of the sovereign State of California, and the sole officer thereof, charged with the duty of upholding of the law in question; that an emergency exists sufficient to warrant the granting of the special permission requested as the denial thereof, will deny the People of the sovereign State of California any official representation before this Court in the above entitled matter.

LAURENCE W. CARR,
District Attorney Shasta County,
State of California.

Subscribed and sworn to before me this 22nd day of January, 1940.

EVELYN L. SPANN,
[SEAL.] *Notary Public in and for the County*
of Shasta, State of California.

EXHIBIT 1.

Certificate of Election.

UNITED STATES OF AMERICA.

STATE OF CALIFORNIA,
County of Shasta, ss:

I, ERROL A. YANK, County Clerk in and for the County of Shasta in the State of California, do hereby certify, that at a August Primary Election held in and for said County on the 30th day of August, 1938, Laurence W. Carr was elected to the office of District Attorney as appears by the official returns of said election, and the statement of votes cast now on file in my office.

In Witness Whereof, I have hereunto affixed my hand and seal this 13th day of Sept. 1938.

ERROL A. YANK,
Clerk.

STATE OF CALIFORNIA,
County of Shasta, ss:

I do solemnly swear that I will support the constitution of the United States and the constitution of the State of California, and that I will faithfully discharge the duties of the office of District Attorney according to the best of my ability.

LAURENCE W. CARR.

Subscribed and sworn to before me, this 6th day of Oct. 1938.

ERROL A. YANK,
Clerk,
By RUTH A. PRESLEIGH,
Deputy Clerk.

The foregoing instrument is a correct copy of the original on file in this office.

Attest: Jan. 22, 1940.

Ruth A. Presleigh, County Clerk and ex-officio Clerk of the Superior Court of the State of California in and for the County of Shasta.

By VIRGINIA ORSINI,
Deputy.

(Endorsed:) Filed Oct. 6, 1938. Errol A. Yank, Clerk. By Ruth A. Presleigh, Deputy Clerk. Seal.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 667

JOHN CARLSON,

Appellant;

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

Appellee.

BRIEF OF APPELLEE IN OPPOSITION TO APPELLANT'S PETITION FOR APPEAL AND STATEMENT AS TO JURISDICTION.

I.

Question.

The question presented by the appeal in this case is whether a municipal ordinance which prevents peaceful picketing and the carrying of signs and banners

1. In public places, and
2. At or near the scene of a labor controversy
3. For the purpose of either:
   a. Dissuading others from entering there to work, or,
   b. Boycotting the sale of disputed goods, is repugnant to the 14th Amendment to the Constitution of the United States in abridging freedom of speech or of the press, right peaceably to assembly, or denies Appellant the equal protection of the laws or of liberty without due process of law.

II.

Statement of the Case.

Appellant was convicted of violating an ordinance of the County of Shasta preventing peaceful picketing. He was one of twenty-nine (29) C. I. O. pickets, picketing on the right of way of a main public highway, known as U. S. Highway No. 99 in the County of Shasta, State of California (Rep. Tr. Pages 4 and 5). Defendant was carrying a banner (Rep. Tr. Page 29 Ex. B-4) on which was inscribed "This job unfair to C. I. O." Other members of the group were also carrying signs and banners containing such inscriptions as "Don't be a scab" (Ex. B-1) "Shasta Tunnel and Construction Worker's Local 260" (Ex. B-2) and "C. I. O. Picket Line" (Ex. B-3). The picketing took place at the site of a tunnel project being constructed in close proximity to the highway (Rep. Tr. Pages 4 and 5). At that time, there was a dispute over jurisdiction of the tunnel job between the A. F. of L. and the C. I. O. (Rep. Tr. Pages 18 and 19). Work was going on at the tunnel project and workers were passing through the picket lines (Rep. Tr. Page 11). The signs were carried in such a manner that they were being shown to the A. F. of L. workers on the job (Rep. Tr. Page 8). The record shows that for sometime the dispute had gone on over jurisdiction, and at one time it even became necessary to shut the job down until the controversy could be settled.

III.

Analysis of Ordinance.

A certified copy of the ordinance is made part of the record in this case. The ordinance prevents all picketing,

peaceful or otherwise, with or without signs and banners, under the following conditions:

1. Where it is done in a public place,
2. At or near the scene of a labor controversy,
3. For the purpose of either:
   a. Dissuading others from entering there to work, or
   b. Boycotting the sale of disputed goods.

The ordinance does not preclude:

1. Picketing in private places, off public streets or squares, such as at a factory or place of employment, where a walk-out or strike may be in progress.

2. On public streets or squares, or in other public places, for any purpose, away from the scene of a labor controversy, or where it is not done "in front of or in the vicinity of" a place housing the subject of controversy where it is believed friction may arise.

3. The passing out of literature of all kinds, concerning the labor dispute on the streets or in other public places, or even at the place of a dispute where the ordinance prevents picketing.

4. Parades, where all manner of signs and banners are carried and other means of communication used.

5. Picketing in front of or in the vicinity of the scene of a labor controversy, if it is solely for the purpose of making known the position of the picket or the organization he represents, and not for one of the two purposes set out in the ordinance.

6. Printing or otherwise advertising views in the newspapers.

7. Hiring of halls or speaking on the radio.

8. Holding of public mass meetings in all public places, so long as it is not "in front of or in the vicinity of" the scene of a labor controversy *and* for one of the two purposes set out in the statute. (Thus, if the defendant had not admitted and it had not been shown that he was doing the acts charged for the purpose of "inducing and influencing persons to refrain from doing and performing services and labor at said Delta Tunnel Project", even the picketing that defendant was doing would not have been unlawful.)

Upon further analysis, it will be seen that this ordinance in no way attempts even to regulate or license *what* may be said, but, in the interest of the public peace, only regulates the *method* and *means* by which it is said.

IV.

Argument.

1. The State Legislature, or Legislative Bodies Vested with Authority Thereof, May, in Exercise of Police Power, Place Reasonable Regulations and Restrictions upon Specific Constitutional Guarantees in the Interest of the Public Peace.

Gitlow v. *New York*, 268 U. S. 652, 45 Sup. Ct. 625, 69 L. Ed. 1138.

2. Every Intendment Should be Resolved in Favor of Constitutionality.

It is incumbent upon opponents of a law to demonstrate that the law clearly is unreasonable, arbitrary and capricious. In the absence of such an affirmative showing, this Court will not superimpose its judgment as to the policy of a statute on that of the legislative authority.

Arizona Copper Co. v. *Hammer*, 250 U. S. 400, 63 L. Ed. 1058;
Great Northern v. *Minnesota*, 246 U. S. 434, 62 L. Ed. 817;
Gitlow v. *New York*; *supra*.

3. As to this Statute there is not only no Affiramtive Showing of Unreasonableness but on the Other Hand this Ordinance has Reasonable Basis.

(1) Some of us may believe that the prevention of peaceful picketing under the conditions set forth in the ordinance is an unwise policy, but unless the legislative body acted arbitrarily and abused its discretion in laying it down, this Court will not pass judgment upon the policy.

Certainly no legislature may abrogate entirely freedom of speech. However, there is no constitutional guarantee of the right to picket. Nevertheless, let us assume that the legislature took away the right to picket entirely.

It has been said by the Supreme Court of California that picketing in its very nature tends to violence.

Pierce v. *Stable Men's Union*, 156 Cal. 70 at p. 79;
Rosenberg v. *Retail Clerks Assn.*, 39 Cal. App. 67 at p. 70.

Such a belief, it might be argued, is wrong, but we know from our knowledge and experience it would be difficult to say that it was unreasonable. As the Court said in *Thomas* v. *City of Indianapolis*, 195 Ind. 440, 145 Northeastern 550 at p. 553, quoting from the case of *Hardy-Tynes Mfg. Co.* v. *Cruse*, 189 Ala. 66, 66 Southern 667, both of which cases sustained ordinances preventing peaceful picketing against all of the constitutional objections raised in the instant case:

> "perhaps our legislature has taken the view adopted by some of the courts, that in actual practice, there is and can be no such thing as peaceful picketing or peaceful persuasion. Certainly this is the effect of our statutes."

In this case, however, there is not only no *abrogation* of the right of freedom of speech or press or of the constitutional guarantees alleged to be taken away, but there is not even an *abrogation* of the right to *picket*. It is only made unlawful under certain conditions, where it may reasonably be likely to engender hostility and thus tend to breaches of the peace. The right to picket in any of the ways heretofore set forth in this memorandum under Number III, is preserved.

4. Appellant's Authorities Distinguished.

Principal cases decided by this Court and cited by Appellant in support of the alleged unconstitutionality are:

a. *Schneider* v. *Irvington* (4 handbill cases), 84 L. Ed. Adv. Op. 115;

Lovell v. *Griffin*, 303 U. S. 444, L. Ed.

These cases involve the right of a state or municipality to subject the circulation of handbills, a method of exercise of free speech and press which is rooted in the oldest of American traditions and considered a fundamental right, to licensing. They were held unreasonable in each instance because the determination of *what* might be said and of dissemination of information generally was placed in the hands of individual officers tending to allow censorship of the contents of all handbills.

(1) One ground of decision in these cases was that the citizen is entitled to be protected from being told *what* he may and may not say. The contents and nature of the publication could be regulated with discrimination.

The Anti-Picketing Ordinance, on the other hand, still allows absolute freedom as to *what* information may be disseminated, but under certain limited conditions regulates the *manner* in which it may be disseminated, because the legislative authority reasonably believes that the particular *mode* prevented tends to endanger the public peace.

(2) The other ground of decision in these cases was that they forbid unlicensed communications in streets and public places *at all*.

As shown under "III. Analysis of Ordinance", picketing is still allowed without the requirement of a license therefor in innumerable instances, and is only regulated under certain limited conditions.

b. *Hague* v. *C. I. O.*, 306 U. S. 624, 84 L. Ed. 1423.

The ordinance in the *Hague* case also provided for licensing. It prohibits all unlicensed meetings and circulation of leaflets, thus allowing arbitrary discrimination in determining *who* may meet in public places and *what* may be circulated.

There is no denial of equal protection, as in the above cases, in the ordinance in question. It does not confer any dictatorial authority on any officer which may be arbitrarily and capriciously exercised. The classification is reasonable and sound. It only prohibits picketing in a public place near the scene of a labor controversy and for purposes which may cause friction.

c. *Herndon* v. *Lowry*, 301 U. S. 242, 81 L. Ed. 1066;
DeJonge v. *Oregon*, 299 U. S. 355, 81 L. Ed. 278.

These cases involve insurrection statute and a criminal sedition law, which again regulated *what* might be said, with no reasonable police power objective apparently served. In this case, a proper police power objective, namely preservation of the public peace, is being promoted. It is a matter of common knowledge that violence frequently results from any kind of controversy at the scene of a labor dispute, because of the tension engendered by the partisanship of the parties in the controversy, and, thus, to say that the legislature was being arbitrary in believing that this limited regulation would be reasonably calculated to protect the

public peace, would be a far-reaching interference with the broad legislative discretion so jealously guarded throughout the history of this Honorable Court.

d. *Grosjean* v. *American Press Co.*, 297 U. S. 233, 80 L. Ed. 660.

The statute in this case was held to abridge the freedom of press because, in view of the legislative purpose sought to be attained, namely, the raising of revenue, the regulation was considered as not reasonably calculated to serve that objective. No sound basis for restricting the circulation of large newspapers and thus hampering the free dissemination of information was shown, as previously stated. It cannot be affirmatively shown that it was unreasonable to believe that the object sought after by the ordinance in the instant case could be accomplished by the particular mode adopted.

e. *Crandall* v. *Nevada*, 73 U. S. 35, 18 L. Ed. 745.

This case is not in point. It was a case involving the passage from one state to another and interference with the Federal Authorities over interstate commerce. There is no such question involved here.

f. *Senn* v. *Tile Layers Union*, 301 U. S. 468, 81 L. Ed. 1229.

(1) This is a case which approves the exercise of legislative discretion. It holds that if the legislature reasonably believes that it is a wise public policy to make peaceful picketing lawful and to prevent injunctions against it, that, whether the policy is wise or unwise in the opinion of the Court, that is a matter for the legislature and it may do so in the exercise of its police power.

Counsel for Appellant upholds this legislative discretion with great enthusiasm where he approves of the policy, but he is not willing to give the legislature the same discretion where it adopts a policy of which he disapproves.

The decisions of this Honorable Court have consistently held that the issue in these cases is not one of *policy* but of *power*. The very fact that the issue raised by this case merited the full consideration of this Honorable Court and that it was called upon to determine whether the granting of this right unhampered was an unreasonable and arbitrary policy, is strong ground for holding that the regulation of this right by another legislative body is not arbitrary and capricious.

(2) The holding in this case clearly states the principle on which this Court should sustain the constitutionality of the ordinance in question. Quoting from 81 L. Ed. at page 1236:

> "Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution. The State, may, in the exercise of its police power regulate the *methods* and *means* of publicity *as well as the public streets.*"

Service of the foregoing Notice of Motion, Motion to Dismiss Appeal, and Brief of Appellee in Opposition to Appellant's Petition for Appeal and Statement as to Jurisdiction is hereby admitted this 20th day of January, 1940.

GLADSTEIN, GROSSMAN AND MARGOLIS,
By RICHARD GLADSTEIN,
Attorneys for Appellant.

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1939

No. 667

JOHN CARLSON, *Appellant,*

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA, *Appellee.*

MOTION TO DISMISS APPEAL FROM THE JUDGMENT OF THE SUPERIOR COURT OF THE COUNTY OF SHASTA.

Come now the People of the State of California, by their attorney, appearing in that behalf, and move this Honorable Court that it shall dismiss the appeal prayed for by Appellant from the Superior Court of Shasta County, on the ground that it is not shown sufficiently that this Court has jurisdiction because Appellant has not established any abuse of legislative discretion sufficient to bring the statute in question into conflict with any provisions of the Constitution of the United States. Appellee tenders herewith its brief containing a statement of the grounds on which the appeal is proposed, and in support of the motion to dismiss.

Dated: This 22nd day of January, 1940.

LAURENCE W. CARR,
District Attorney
Shasta County, State of California,
LAURENCE W. CARR,
Attorney for Appellee.

FILE COPY

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 667

JOHN CARLSON,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA,

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SHASTA.

BRIEF FOR APPELLEE.

LAURENCE W. CARR,
District Attorney of Shasta County,
Counsel for Appellee.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1939

No. 667

JOHN CARLSON,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA.

Appellee.

BRIEF FOR APPELLEE.

Opinions Below.

The opinion below is printed together with the opinion in a related case at pages 72 and 73 of the transcript of record.

Jurisdiction.

The jurisdiction of this Court rests on Section 273 (a) of the Judicial Code, as amended by the Acts of February 13, 1925, January 31, 1928, and April 26, 1928. The appellant, John Carlson, was convicted in the Justice's Court of Township Number Nine, Shasta County, California, for a violation of a county ordinance. The judgment was affirmed by the Superior Court of Shasta County from which there is no further appeal allowed in the State courts. The case comes here on appeal.

I.

Statement of the Case.

Appellant was convicted of violating an ordinance of the County of Shasta prohibiting peaceful picketing. He was one of twenty-nine (29) C. I. O. pickets, picketing on the right of way of a main public highway, known as U. S. Highway No. 99 in the County of Shasta, State of California (Tr. p. 22). Defendant was carrying a banner (Tr. p. 38, Ex. b-4) on which was inscribed "This job unfair to C. I. O." Other members of the group were also carrying signs and banners containing such inscriptions as "Don't be a scab" (Ex. b-1), "Shasta Tunnel and Construction Worker's Local 260" (Ex. b-2), and "C. I. O. Picket Line" (Ex. b-3). The picketing took place at the site of a tunnel project being constructed in close proximity to the highway (Tr. p. 22). At that time, there was a dispute over jurisdiction of the tunnel job between the A. F. of L. and the C. I. O. (Tr. pp. 30 and 31). Work was going on at the tunnel project and workers were passing through the picket lines (Tr. p. 41). The signs were carried in such a manner that they were being shown to the A. F. of L. workers on the job (Tr. p. 25). The record further shows that for some time the dispute over jurisdiction between the A. F. of L. and the C. I. O. on this project had existed, and that it even became necessary to shut down the job on several occasions in order to settle the dispute.

II.

Question.

The question before this Court is whether or not the Shasta County Board of Supervisors has exceeded its legislative authority in adopting an ordinance which pro-

hibits peaceful picketing in public places, under certain conditions therein set forth.

The ordinance is attacked by appellant on several grounds:

(1) That it abridges the constitutional guarantees of freedom of speech and of the press.

(2) That it abridges the constitutional guarantee of the right of peaceable assemblage.

(3) That it denies equal protection of the laws in that, as is stated in Appellant's brief, in practice the ordinance is used only against workers.

(4) That it is too vague and indefinite to provide a standard of guilt.

III.

Analysis of Ordinance.

The ordinance prevents picketing, and the carrying of signs, banners, and other displays, under the following conditions:

(1) Where it is done in a public place, and

(2) At or near the scene of a labor controversy, and

(3) For the purpose of dissuading others from,

(a) Entering such place, or
(b) Purchasing goods, or
(c) Entering there to work.

The ordinance does not prevent:

(1) The selling of newspapers and shouting of headlines at the point of dispute.

People v. *Armentrout*, 118 Cal. App. 752.

(2) Loitering, picketing and carrying of signs and banners anywhere away from the scene or vicinity of the

controversy, including private places, such as at a factory or place of employment, where a lock-out or strike may be in progress.

(3) The passing out of literature either at the place of dispute or away from it, giving all of the facts concerning a labor dispute.

(4) Parades where signs, banners, loudspeakers and other means of communication are used.

(5) Printing or advertising in newspapers; it is a matter of common knowledge that labor disputes are news and all important information about the union position is usually given free of charge.

(6) Radio broadcasts.

(7) Meetings in private halls where the public is invited or public mass meetings in any public places away from the scene of dispute, at which one may picket, or discuss or speak upon, all phases of labor disputes.

Upon analysis, it will be seen, also, that the ordinance provides for no form of censorship or licensing, and regulates in no way *what* may be said, but only regulates the *method* or *means* of communication, under limited circumstances.

IV.

Summary of Argument.

A. The ordinance does not abridge freedom of speech or of the press.

1. A State May, in the Exercise of its Police Power, Place Reasonable Regulations and Restrictions upon Specific Constitutional Guarantees in the Interest of Public Peace.

Whitney v. *Calif.*, 274 U. S. 357, 71 L. Ed. 1095;
Gitlow v. *New York*, 268 U. S. 652, 69 L. Ed. 1138;
Schenck v. *U. S.*, 249 U. S. 47, 63 L. Ed. 470.

2. The Board of Supervisors of the County was Lawfully Exercising the State Police Power.

> "Any county, city, town, or township may make and enforce within its limits all such local, police, sanitary, and other regulations as are not in conflict with general laws." Constitution of California, Article XI, Section 11.

The police power of the county is exercised by the action of the Board of Supervisors. Section 4041.25, Political Code of California.

This ordinance as applied to Appellant is not in conflict with any of the general laws of the State.

Appellant contends that this ordinance conflicts with Section 923 of the Labor Code in the State of California. It has been specifically held in a recent California Appellate case that Section 923 of the Labor Code does not guarantee a right to peacefully picket for the purpose of bringing about recognition of a collective bargaining agency where the contractor has already recognized another agency.

McKay v. *Retail Automobile Associations Local Union*, Cal. App. 97 C. A. D. 122; 89 P. 2nd 113.

3. Every Intendment Should be Resolved in Favor of Constitutionality.

It is incumbent upon opponents of a law to demonstrate that the law clearly is unreasonable, arbitrary and capricious. In the absence of such an affirmative showing, this Court will not superimpose its judgment as to the policy of a statute on that of the legislative authority.

Senn v. *Tile Layers Union*, 301 U. S. 468; 81 L. Ed. 1229;

Gitlow v. *New York, supra;*

Whitney v. *Calif., supra;*

Great Northern v. *Minnesota*, 246 U. S. 434, 62 L. Ed. 817.

4. Not Only is There No Affirmative Showing That the Policy of This Ordinance is Arbitrary, But on the Other Hand, This Limited Regulation Can Be said to Be Reasonably Calculated to Promote the Public Welfare.

(a) The Issue as to the Wisdom of this Policy is Controversial.

(1) Authorities in a number of jurisdictions have held picketing in its very nature to be inimical to the public welfare, as tending to breaches of the peace.

Elkind and Sons v. *Retail Clerks International Protective Ass'n*, (N. J.) 169 A. 494; 114 N. J. Eq. 586;

Pierce v. *Stablemen's Union*, (Cal.) 156 Cal. 70, 103 P. 324;

Local Union v. *Stathakis*, (Ark.) 135 Ark. 86, 205 S. W. 450;

St. Germain v. *Bakery, etc. Union*, (Wash.) 97 Wash. 282, 166 P. 665;

Lyle v. *Local 452*, 174 Tenn. 222, 124 S. W. (2nd) 701 (Tenn.);

Keith Theatre v. *Vachon*, (Vt.) 187 A. 692, 702;

Truax v. *Corrigan*, 257 U. S. 312, 340.

Said the Court in *Thomas* v. *Indianapolis*, 195, Ind. 440, 145 N. E. 550, 552:

> "Although the person, or persons, on picket duty may not by word or gesture make any threat or use any force, we all know that in most of such cases the very presence of the picket is apt to give rise to contentions and arguments that often result in bloodshed and riots."

(2) A number of jurisdictions have held such ordinances and statutes to be a reasonable exercise of the police power.

Thornhill v. *Alabama*, 189 So. 913 (Ala.);

Hardie Tynes Mfg. Co. v. *Cruse*, 189 Ala. 66, 66 So. 657;

Thomas v. *Indianapolis, supra;*
Watters v. *Indianapolis,* 191 Ind. 671, 134 N. E. 482;
Ex Parte Stout, 82 Tex. Cr. Rep. 316, 198 S. W. 967;
Peo. v. *Gidaly,* 3 Cal. Supp. 125, 93 P. 2nd 660.

Said the Court in *Thomas* v. *Indianapolis,* 145 N. E. at page 553, quoting *Hardie Tynes* v. *Cruse, supra:*

> "Perhaps our legislature has taken the view, adopted by some of the courts, that in actual practice there is and can be no such thing as peaceful picketing or peaceful persuasion. Certainly this is the effect of our statutes."

(3) The policy is, therefore, one which is not wholly arbitrary. A *bona fide* dispute exists as to its wisdom.

(b) A Number of Tangible Public Benefits Are Brought About by the Ordinance.

It is contended by Appellant that no substantial reasons can be advanced for supporting the validity of the ordinance. Following are a number of police power objects and substantial purposes warranting the exercise of the police power.

(1) *Removal of an obstruction from the public sidewalks, streets and highways.*

This Court has sustained the authority of municipalities to regulate the use of public ways and other public places. It is admitted by appellant that the picketing was being conducted upon a highway with automobiles "whizzing by." This brings the regulation as to this particular case within the rule in *Fifth Avenue Coach Co,* v. *City of New York,* 221 U. S. 467, 55 L. Ed. 815. The court there sustained the authority of the legislature in the exercise of the police power to regulate the use of the streets by prohibiting the

display of signs and banners on vehicles because the same would attract attention and thus interfere with traffic and cause congestion.

In *Davis* v. *Massachusetts*, 167 U. S. 43; 42 L. Ed. 71, defendant was entirely prohibited, because he had no permit, from making a public address in a public square. Said the court, in 42 L. Ed. at page 72, adopting the language of the Massachusetts Court:

> "For the legislature absolutely or conditionally to forbid public speaking in a highway or public park is no more an infringement of the rights of a member of the public than for the owner of a private house to forbid it in his house. When no proprietary right interferes, the legislature may end the right of the public to enter upon the public place by putting an end to the dedication to public uses. So it may take the lesser step of limiting the public use to certain purposes. * * *"
>
> "It is therefore conclusively determined there was no right in the plaintiff in error to use the common except in such mode as the legislature in its wisdom may have deemed proper to prescribe. * * *;
>
> "Plaintiff in error cannot avail himself of the right granted by the State and yet obtain exemption from the lawful regulations to which this right on his part was subjected by law."

On the authority of *Davis* v. *Massachusetts*, *supra*, the United States Court of Appeals of the District of Columbia, in *Freed* v. *U. S.*, 100 F. (2d) 691, sustained the validity of a Joint Resolution of Congress as a reasonable and proper restriction on the right of freedom of speech and assembly. A petition for writ of certiorari in that case was denied by this Court at 306 U. S. 640; 83 L. Ed. 1040.

The Resolution made it unlawful, within 500 feet, of an embassy, legation, or consulate in the District of Columbia to display any flag, banner, placard or device designed or adopted to intimidate, coerce, or bring into public odium any foreign government, party, or organization, or to bring

into public disrepute its political, social, or economic acts or views, or to intimidate, coerce, harass, or bring into public disrepute any diplomatic or consular representatives, or to congregate within five hundred feet of any embassy, legation, or consulate and refuse to disperse after being ordered to do so by the police authorities.

Said the court in 100 F. (2d) at page 693:

> "These are reasonable and proper restrictions. In them there is no abridgement of the right of speech or of assembly or of any other constitutional right of the citizen. It has never been considered that the right in the public to use the streets is unlimited or that it may be exercised in defiance of the laws of the United States or the states; on the contrary it has always been considered that a municipality may control and regulate the use of the streets in the general good";

It is true that the legislative object of the Joint Resolution in that case and the ordinance in question are quite different. It is to be remembered, however, that the contention of appellant is that an unreasonable and arbitrary restriction is imposed upon his individual rights. The individual restriction in this case is almost identical. Peaceful picketing is prohibited only in proximity to a place where the views thereby declared may be considered most offensive and mo t likely to cause friction. All other methods of disseminating those views are preserved. The restriction, in this case also, is limited and is a reasonable exercise of the power of the public to regulate public places.

(2) *The removal of an occasion of violence.*

It is a matter of common knowledge that violence frequently results from the activity of partisans at the scene of a labor controversy. By preventing the congregation of such partisans under tense circumstances openly declaring their partisanship and disapproval of the conduct of others, an occasion of violence will be removed.

(3) *Protection of business and those rightfully employed.*

The reports are replete with cases involving the injury to businesses and those rightfully employed by such businesses from abuses arising out of picketing, boycotts, and the use of false banners, and some enjoin the annoyance resulting from such action, whether peaceful or otherwise. Apparently the legislature has determined on which side of such disturbances and controversies the public interest lay. Such a determination is consistent with and even adopts the principles of recent cases in California involving peaceful picketing.

> *In re Lyons*, 27 Cal. App. 2d, 293 (wherein the court specifically reserves the question of the constitutionality of a statute or ordinance); *McKay* v. *Retail Automobile Salesman's Local Union* (injunction against peaceful picketing to compel recognition of collective bargaining agent of pickets [Cal. App.] 97 C. A. D. 122, 89 Pac. 2d, 426, 90 Pac. 2d 113).

(4) *Public Tranquility is preserved.*

Public concern and disquiet such as gave rise to this ordinance, is a factor which the legislature may consider. Any annoyance and disturbance of the public mind sufficient to bring about such enactments has a direct bearing upon the public welfare. It is specious argument to contend that no unlawful act is committed, and that there is a remedy for such acts as criminal libel, and slander, battery and obstruction of public ways, etc. Such things have been made unlawful only because they also in some way outrage the public conscience and thus affect the public welfare. The injury in each of such instances is done to private persons, and individual liberties are restrained by making them unlawful. If the repercussions of a new-found strength in organized labor so affect the public conscience as to result in a greater restriction on this right which the interest of public freedom requires, in return for other liberties now

granted to labor, such adjustment should be affirmatively shown to be arbitrary before it is upset.

(c) *The Restriction on the Individual Right is not so great as to outweight the Public Benefits.*

(1) There is no constitutional guarantee of the right to picket. The only right guaranteed is a right to disseminate the facts concerning a labor dispute without abusive and arbitrary restriction. As is shown under "III, Analysis of Ordinance," innumerable means of communication are reserved to appellant and his associates with full opportunity by those means to publicize their position and views.

(2) It is incumbent on appellant to make an affirmative showing that the ordinance in some way has caused an arbitrary and unreasonable restriction on the exercise of his individual right. We submit that no such showing has been made.

(3) In an earlier era when labor was experiencing a period of struggle and oppression, such regulation of picketing might have been an injurious curtailment of the publication of facts concerning a labor dispute, as picketing was indeed one of the few means labor possessed of publicizing its cause. Fortunately, however, enlightened legislation and an enlightened judicial interpretation of the Constitution have resulted in an improvement in the status of labor, in which it is far removed from that period in which it was believed that labor was entitled to concessions which have been, with the approval of this court, denied to others.

Fifth Avenue Coach Co. v. *City of New York, supra* (ordinance prohibiting operation of advertising wagon of streets);

Davis v. *Massachusetts*, 167 U. S. 43 (ordinance prohibiting speech in Public Square);

Frend v. *U. S.*, 100 F. (2d) 691, *supra*.

Progressive legislation and liberal jurisprudence have not only enabled labor to become powerfully organized but have rendered such organization effective to the point that, unwisely managed, it could become an instrument of oppression. Labor is no longer a pawn of capital. In size and wealth it outstrips most business. Its influence is felt equally with that of business, if not more so, in all manner and means of communication.

Agencies have been established through which the rights of the laboring man have been made secure. The record shows that appellant has filed a complaint before the National Labor Relations Board (Tr. 34), wherein an attentive forum was provided for the statement of his position and the redress of the injury of which he complained. How much more effective is such machinery than the act of picketing.

(d) *Local Conditions require Regulation.*

The record shows that in Shasta County considerable construction amounting to many millions of dollars is taking place on the Central Valley Project, pursuant to an Act of Congress. The Shasta Dam alone involves an expenditure of approximately thirty-five million dollars. To deny the legislative authority charged with maintaining order in a locality, where such a volume of construction labor is employed, the means of so doing, according to their discretion, would be an unwarranted invasion of the legislative province.

> "The legislature, being familiar with local conditions, is primarily the judge of the necessity of such enactments."
>
> *McLean* v. *Arkansas*, 211 U. S. 539, 53 L. Ed. 315, 319.

(e) *This ordinance is consistent with modern public policy respecting labor relations.*

With the establishment of modern machinery for the promotion of peaceful arbitration and harmonious relations between capital and labor, and between the internal divisions of labor, it is seeking a just concession, for the public to request labor, in return, to desist from conduct, from which so many evils and so much violence have been known to flow.

The recitals contained in the ordinance recognize that due to a new found freedom on the part of labor, and its resulting strength, different groups in labor, vying for supremacy, have broken up into factions warring against each other, as in the instant case, to the annoyance of the public tranquillity and welfare. To offset the repercussions of such development, the public reasonably asks this adjustment, to retain its freedom from undue disturbance and to further peaceful settlement of labor disputes.

B. The Constitutional Guarantee of Freedom of Assemblage Is Not Abridged.

1. The statement of Mr. Justice Stone in *Hague* v. *C. I. O.*, 306 U. S. 624; 83 L. Ed. 1423, does not apply as the assemblage was for the purpose of protesting the performance of the work by the A. F. of L. and not for the purpose of discussing an Act of Congress.

2. Assuming that the assemblage in this case came within the class to which the constitutional guarantee extends, it has nevertheless been held that this privilege is subject to regulation by the state in the reasonable exercise of its police power.

Presser v. *Illinois*, 116 U. S. 282; 29 L. Ed. 615.

C. There Is No Merit in the Contention that the Ordinance Denies Equal Protection of the Laws.

No administrative authority is given to any individual or agency to determine who does and who does not come within its terms, as in the cases of *Yick Wo* v. *Hopkins*, 118 U. S. 220, and *Hague* v. *C. I. O., supra.* The ordinance applies in specific terms to "any person."

D. The Ordinance, as Applied to the Instant Case, Provides a Definite Standard of Guilt.

1. It is contended that the term "picketing" is too vague and indefinite. This term has a well defined meaning as set forth in the case of *Thomas* v. *Indianapolis, supra.*

2. It is also contended that the *Hague* case holds a prohibition of "carrying signs and banners" to be invalid. The mere fact that the ordinance in the *Hague* case prohibited the carrying of signs, banners, or placards is not enough to construe that decision as preventing regulation of such conduct. The Court did not pass on the legality of that provision but held that the ordinance denied equal protection of the laws in allowing an official to determine by a pliable standard who came within its provisions.

3. It is also contended that the term "picketing" includes the distribution of handbills. No mention is made of such distribution in the terms of the ordinance. The term "picketing" is capable of a construction which excludes such conduct. *Thomas* v. *Indianapolis, supra.* Certainly it is then capable of a construction which will preclude invalidity, and courts will not under such circumstances place a construction on it which would make it unconstitutional.

People v. *Armentrout*, 118 Cal. App. 754;
Jones and Laughlin Steel Co. v. *N. L. R. B.*, 301 U. S. 1.

4. Defendant is charged with and admitted "carrying signs and banners" in violation of the ordinance. This is a specific act clearly defined. There is no dispute as to the fact, and therefore defendant comes within the provision prohibiting the carrying of signs and banners for the purposes set forth. Even if the term "picketing" were too broad or too vague, nevertheless under the saving clause in Section 3, the use of such term will not invalidate the part defining the specific act of which Appellant was convicted, to wit, "carrying of signs and banners."

E. Appellant's Authorities Distinguished.

1. *Schneider* v. *Irvington*, 84 L. Ed. Adv. Op. 115, etc. (Four handbill cases);
Lovell v. *Griffin*, 303 U. S. 444.

These cases involved the constitutionality of ordinances, licensing the distribution of handbills (Irvington and Griffin Ordinances) and prohibiting the distribution of handbills (Los Angeles, Worcester, and Milwaukee Ordinances). There were two main grounds of decision.

(a) That the bestowal of authority on an individual or public agency to grant the licenses and to thus distribute them discriminately, was a denial of equal protection and allowed *censorship* of publications.

In this ordinance, there is no provision for licensing, and that element, is, therefore, not present.

(b) That the prevention of *all* distribution of handbills was a drastic measure, as compared with the remoteness and relative importance of the legislative object, cleanliness of streets.

The ground of decision on this point is two-fold:

(1) The means did not bear a direct and substantial relation to the end sought after. The object was too remote.

A more direct means of attaining cleanliness of streets would have been to make the throwing of handbills in the streets unlawful.

(2) The single public benefit did not warrant the drastic restriction on the individual right.

In this case:

(1) As previously shown, a number of evils *directly* resulting from the act of picketing are removed.

a. Obstruction of streets, sidewalks, and highways.
b. The congregation of known partisans under tense circumstances.
c. An occasion of violence.
d. The known abuses of this practice.
e. Irreparable damage to businesses.
f. Disturbance of the public mind and an occasion of annoyance to persons lawfully using public places.

(2) On the other hand, as outlined under "III, Analysis of Ordinance," and in the argument heretofore, concerning the limited restriction of the individual right, we have a much less drastic and reasonable limitation on the right to disseminate information concerning a labor dispute.

Appellant's brief dwells upon certain language of this Court contained in the handbill cases to the effect that streets are the natural place for the dissemination of information. It is argued that, therefore, no restriction should be placed upon the use of the streets for this purpose. We submit that this Court was there speaking with reference to the facts of that case and of an unreasonable regulation of public places. The citation of such language in this case begs the question, for certainly it is not denied that reasonable restrictions may be imposed.

2. *Hague* v. *C. I. O.*, 306 U. S. 624, 83 L. Ed. 1423.

The ordinance in the *Hague* case also provided for licensing. That case came up on a record which showed a capricious and arbitrary censorship and oppression of persons seeking to publicly declare their political views.

There is no such situation involved here. The ordinance does not provide for licensing or allow censorship. The classification is reasonable and sound. It only prohibits picketing in a public place, near the scene of a labor controversy, and for purposes which may cause friction.

3. *Herndon* v. *Lowry*, 301 U. S. 242, 81 L. Ed. 1066;
DeJonge v. *Oregon*, 299 U. S. 355, 81 L. Ed. 278;
Schenck v. *U. S.*, *supra*;
Whitney v. *Calif.*, *supra*;
Stromberg v. *Calif.*, 283 U. S. 359;
Near v. *Minnesota*, 283 U. S. 697.

These cases all involve the limitation on and regulation of the *content* of publications. They placed restrictions on *what* might be published. A different rule, the rule of "clear and present danger," applies to cases of that nature, as the censorship of the character and content of a publication certainly is a more dangerous restriction on both the individual and public than a mere regulation of the *means* of disseminating such information, under certain conditions, as in this case.

The cases of *Herndon v. Lowry*, *DeJonge v. Oregon*, and *Stromberg* v. *California* all, in addition to having the above ground of decision, recognized a remoteness between the means adopted and the evil attacked. The *Whitney* case and *Schenck* case, on the other hand, went farther than the present case and actually imposed restrictions on the *content* of publications.

4. *Grosjean* v. *American Press Co.*, 297 U. S. 233, 80 L. Ed. 660.

The statute in this case was held to abridge the freedom of press because, in view of the legislative purpose, namely, the raising of revenue, the regulation was considered as not reasonably calculated to serve that objective. No sound basis for restricting the circulation of large newspapers and thus hampering the free dissemination of information was shown, as previously stated. There is no contention in this case that one legislative purpose is attempted under the pretext of accomplishing another.

5. *Crandall* v. *Nevada*, 73 U. S. 35, 18 L. Ed. 745.

This case is not in point. It was a case involving the passage from one state to another and interference with the Federal Authorities over interstate commerce. There is no such question involved here.

6. *Senn* v. *Tile Layers Union*, 301 U. S. 468, 81 L. Ed. 1229.

(a) This is a case which approves the exercise of legislative discretion. It holds that if the legislature reasonably believes that it is a wise public policy to make peaceful picketing lawful and to prevent injunctions against it, that, whether the policy is wise or unwise in the opinion of the court, that is a matter for the legislature and it may do so in the exercise of its police power.

Counsel for Appellant upholds this legislative discretion with great enthusiasm where he approves of the policy, but he is not willing to give the legislature the same discretion where it adopts a policy of which he disapproves.

The decisions of this Court have consistently held that the issue in these cases is not one of *policy* but one of *power*. The very fact that the issue raised by the *Senn*

case was fully considered by this Court, and that it was called upon to determine whether an act was unconstitutional which freed picketing from restriction, is strong ground for holding that the restriction of it by another legislative body, is not arbitrary and capricious.

(b) The holding in this case clearly states the principle sustaining the constitutionality of the ordinance in question. Quoting from 81 L. Ed. at page 1236:

> "Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed, by the Federal Constitution. The State m in the exercise of its police power, regulate the *methods* and *means* of publicity *as well as the public streets.*" (Italics supplied.)

7. *City of Reno* v. *Second Judicial District Court*, (Nev.) 95 P. (2d) 994.

(a) This case was based upon certain authorities which recognized a constitutional right to engage in peaceful picketing in the absence of statute. One of the cases cited as authority for the proposition that the right is guaranteed by the Constitution is the case of *In re Lyons*, 27 Cal. App. 2d 293. Those cases do not establish a right that is absolute and subject to no restriction.

Said the Court in the Lyons case, page 298:

> "In California there is no statute either prohibiting or permitting peaceful picketing, under the circumstances here involved as is now the case in some jurisdictions."

And again, at page 306:

> "Before closing this opinion we should again call attention to the fact that no statute or ordinance prohibiting or regulating picketing is here involved. What

may be the right under the police powers of the state, or any of its political subdivisions, to prohibit or regulate the use of public streets or sidewalks for picketing is not before us and is not decided."

(b) The reasoning of the court in declaring the ordinance to be an invasion of the constitutional guarantee is unsatisfactory and furnishes no intelligent approach to our question.

Vol. 95 P. 2d, p. 1001:

"Liberty regulated by law is a fundamental of our democratic government. However, neither freedom of speech nor liberty of action may be suppressed under the guise of regulation.

"They are not subject to the exercise of arbitrary power.

"Any annoyance or loss of business caused to an employer by *lawful* picketing does not warrant the exercise of the police power of the state." (Italics supplied.)

8. *People* v. *Harris* (Colo.), 91 P. 2d 989.

(a) The opinion in this case concludes that the restriction is arbitrary, yet no affirmative showing is made of a restriction of an individual right so drastic as to outweigh the public benefits reasonably sought to be accomplished.

(b) The language of the court shows a disregard for the real issue, and the reasoning is very unsatisfactory:

"Where a law, such as section 90, here under consideration, *impairs* freedom of speech * * * we have no doubt that it constitutes an invasion of constitutional guarantees"; (Italics supplied.)

The court has apparently disregarded and foreclosed any right in the legislature to impair freedom of speech by imposing reasonable restrictions upon it in the exercise of the police power.

F. Other Contentions of Appellant.

1. The validity of this ordinance does not depend on recitals therein.

(a) Much is made by appellant of certain recitals constituting the emergency declaration which made the ordinance immediately effective. This declaration is no part of the ordinance, and its validity is not to be determined by anything contained by way of recital in the ordinance.

Lassem v. *Getty* (Cal.), 72 Pac. 2d 183, 188;
Ex Parte Young, 154 Cal. 117, 97 P. 822;
Ex Parte Yung (Cal. App.), 94 P. 594.

Said the court in the case of *Ex Parte Yung, supra*:

> "It is not necessary that the reason for its enactment be set up unless the legislative or constitutional authority for the passage of ordinances requires it." Citing *Mayer* v. *Dry Dock*, 133 N. Y. 104, 30 N. E. 563.

Sections 4057 and 4058 of the Political Code of California, which provide for the form of county ordinances, do not require any declaration of policy or other recitals.

(b) The urgency clause to which appellant attaches so much importance is required by Section 4058 of the Political Code of California *solely* for the purpose of making an ordinance immediately effective, where there is shown to be an emergency involving immediate preservation of public peace, health, or safety.

2. Much reliance is placed upon voluminous opinions and conclusions of the witnesses Wiese and Morgan concerning labor disputes. It is presumed that the legislature has entered as fully, if not more so, into the various considerations of public policy on which the ordinance is based and has made its determination with full knowledge of the matters testified to. The mere opinions and con-

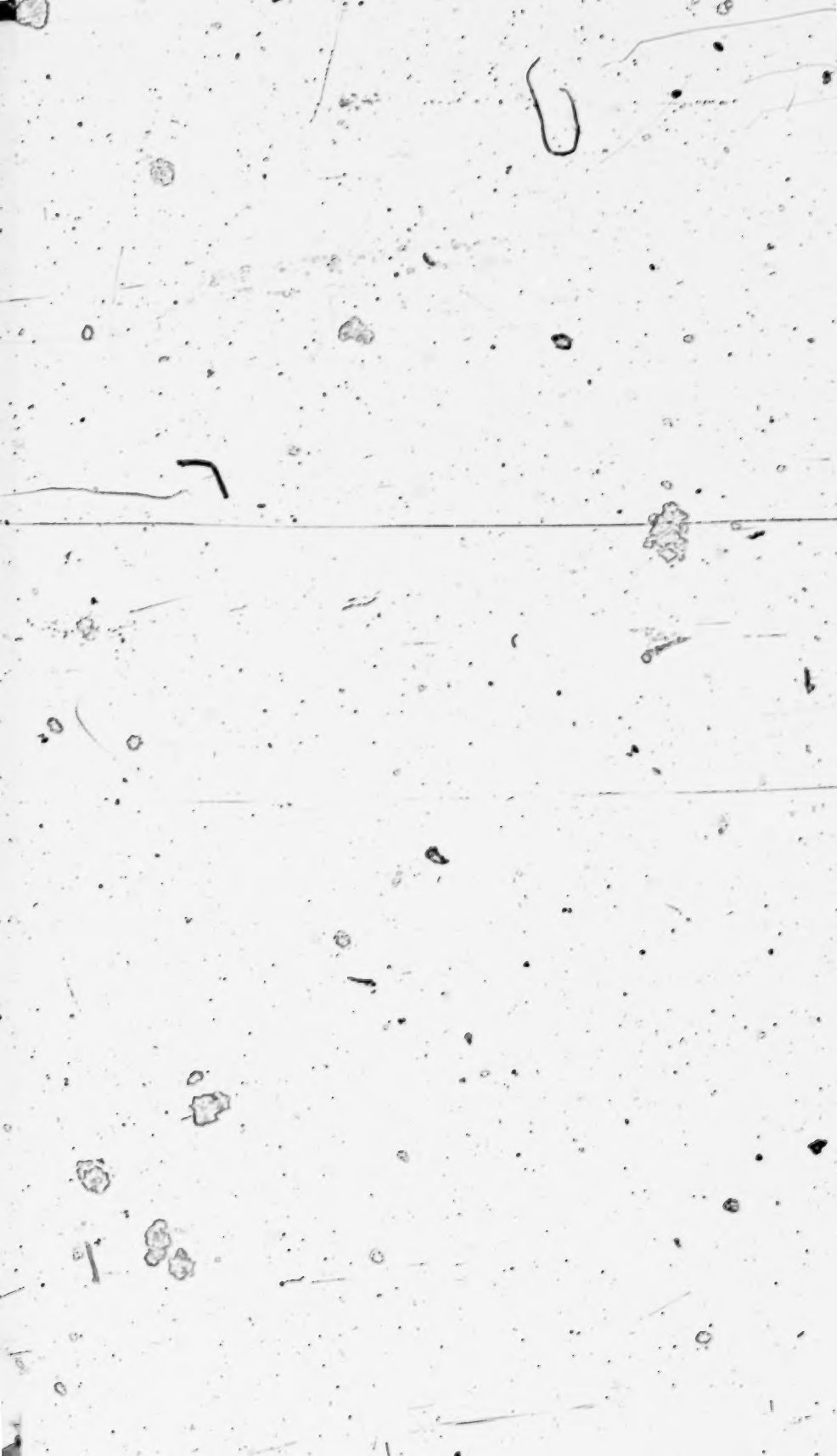
clusions of individuals which do not even qualify as expert testimony, certainly are not of themselves a ground for upsetting the legislative determination. It is still incumbent on appellant to show a substantial injury to an individual right, which it is submitted he has not done.

Conclusion.

The ordinance in question is a necessary police power regulation of a real substantial evil, which neither censors nor prohibits freedom of speech or assembly, but subjects them to reasonable restrictions, entirely consistent with the most modern decisions of this Court on the regulation of such constitutional guarantees. It is, therefore, submitted that the ordinance in question does not deprive appellant of any constitutional right that it was a valid exercise of the police power; and that the judgment of the lower court should therefore be affirmed.

Respectfully submitted,

LAURENCE W. CARR,
District Attorney of Shasta County,
State of California,
Counsel for Appellee.



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Supreme Court of the United States

OCTOBER TERM, 1939.

No. 667.

JOHN CARLSON,

Appellant,

against

THE STATE OF CALIFORNIA,

Appellee.

BRIEF FOR AMERICAN CIVIL LIBERTIES UNION AS AMICUS CURIAE.

AMERICAN CIVIL LIBERTIES UNION
as amicus curiae.

OSMOND K. FRAENKEL,
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Supreme Court of the United States

OCTOBER TERM, 1939.

No. 667.

JOHN CARLSON,

Appellant,

against

THE STATE OF CALIFORNIA,

Appellee.

BRIEF FOR AMERICAN CIVIL LIBERTIES UNION AS AMICUS CURIAE.

The American Civil Liberties Union is concerned with this case because it has always regarded peaceful picketing as an appropriate, and in most circumstances, an essential manifestation of freedom of speech and of the press. In labor controversies it is particularly important that strikers may, by placard or oral statement, convey to the public the facts of their controversy at the place where the controversy exists. While such activity on the part of strikers is, like all other public action, subject to supervision by the police in the interests of public order, the American Civil Liberties Union believes that statutory prohibition of all peaceful picketing violates the constitutional guaranties.

Statement of the Case.

In the instant case petitioner was charged with violation of an ordinance of the County of Shasta, California. The relevant portions of the ordinance are as follows:

> "Section 2. It shall be unlawful for any person, in or upon any public street, highway, sidewalk, alley or other public place in the County of Shasta, State of California, to loiter in front of or in the vicinity of, or to carry, show or display any banner, transparency, badge or sign in front of, or in the vicinity of, any works, or factory, or any place of business or employment, for the purpose of inducing or influencing, or attempting to induce or influence * * * any persons to refrain from doing or performing any service or labor in any works, factory, place of business or employment * * *" (R. 68).

The complaint (R. 1) charged appellant with having picketed the Delta Tunnel Project operated by the United Concrete and Pipe Company. Appellant had been employed by that concern (R. 30). He and others picketed the plant after an unsuccessful attempt to negotiate a collective bargaining contract (R. 32).

The People's only witness at the trial, an Assistant District Attorney, stated that the picketing was orderly and peaceful, without intimidation or threats (R. 26, 27). It occurred on the public highway (R. 26), without interference with pedestrian or vehicle traffic (R. 27).

Appellant raised the issue of the constitutionality of the ordinance at every possible opportunity: by demurrer to the complaint (R. 6), at the conclusion of the People's case (R. 28); at the end of the entire case (R. 66) and by motion in arrest of judgment (R. 11).

The issue was presented on the appeal to the Superior Court (R. 16). And that Court expressly passed on and overruled the constitutional claim (R. 72). While the

opinion then rendered, like the earlier opinion there relied on (R. 73), does not expressly refer to the United States Constitution, appellant had urged throughout that the statute was unconstitutional on the ground that it violated rights of freedom of speech, of the press and of assembly guaranteed by the due process clause of the Fourteenth Amendment (see particularly R. 3, 6, 12).

POINT I.

The ordinance denies petitioner's right of free speech in violation of the process clause to the Fourteenth Amendment.

The ordinance, as applied in the case at bar, prohibits all peaceful picketing. This, we submit, may not constitutionally be done. As Mr. Justice Brandeis said in *Senn* v. *Tile Layers Protective Union*, 301 U. S. 468, 478 (1936):

> "Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution."

The thought implicit in this quotation, that the right to make known the facts of a labor dispute is part of the right of freedom of speech, has been recognized by many Courts. Thus the Supreme Court of Nevada, in *City of Reno* v. *Second Judicial District Court* (1939), 95 P. 2nd 994, held void an ordinance banning all picketing on the express ground that peaceful picketing was "immune from legislative interdiction by reason of constitutional guaranties." And the Supreme Court of Colorado, in *People* v. *Harris* (1939), 104 Colo. 386, 91 P. 2nd 989, refused to permit an application of a similar statute to facts identical with those in the case at bar, holding that such application would be a denial of freedom of speech. In *People* v. *Garcia* (1939),

3 Cal. Supp. 171, 98 P. 2nd 265 (Cal. Superior Ct., App. Dept.), an ordinance of Los Angeles was declared void on this ground.

See also concurring opinion of Schauer, J., in *People* v. *Gidaly* (1939), 3 Cal. Supp. 125, 93 P. 2nd 660 (Cal. Superior Ct., App. Dept.); *People* v. *Ribinovick* (1939), 171 Misc. 569, 13 N. Y. Supp. 2nd 135, and *City of St. Louis* v. *Gloner* (1907), 210 Mo. 502, 109 S. W. 30.

Similar views were expressed in cases which did not involve ordinances: *Truax* v. *Bisbee Local No. 380* (1918), 19 Ariz. 379, 171 P. 121; *Ex parte Lyons* (1938), 94 Calif. App. 70, 81 P. 2nd 190; *Marx & Haas Jeans Clothing Co.* v. *Watson* (1902), 168 Mo. 133, 67 S. W. 391; *Lindsay* v. *Montana Fed. of Labor* (1908), 37 Mont. 264, 96 P. 127; *Individual R. F. S. Owners Ass'n* v. *Penn. Treaty Ass'n* (Pa., 1938), 33 Legal Intelligencer 100. See also *Kraemer Hosiery Co.* v. *American Fed. F. F. H. Workers* (1931), 305 Pa. St. 206, 157 A. 588. See 48 Yale L. J. (1938), 308, 312, id. 1527.

Cases such as *Ferguson* v. *Peake* (1927), 18 F. 2nd 166; *Thomas* v. *City of Indianapolis* (1924), 195 Ind. 440, 145 N. E. 550; *State* v. *Personett* (1923), 114 Kan. 680, 220 P. 520; *Com.* v. *Haffer* (1932), 279 Mass. 73, 180 N. E. 615; *Ex parte Stout* (1917), 82 Tex. Cr. A. 183, 198 S. W. 967, were decided before this Court had pronounced its present views about freedom of speech. They must be deemed overruled.

This Court has recently said, in the *Leaflet Cases*, 308 U. S.,—with reference to state legislation generally:

> "In every case, therefore, where legislative abridgment of the rights is asserted, the courts should be astute to examine the effect of the challenged legislation. Mere legislative preferences or beliefs respecting matters of public convenience may well support regulation directed at other personal activities, but be insufficient to justify such as diminishes the exercise of rights so vital to the maintenance of democratic

institutions. And so, as cases arise, the delicate and difficult task falls upon the courts to weigh the circumstances and to appraise the substantiality of the reasons advanced in support of the regulation of the free enjoyment of the rights."

There can be no doubt of the effect of the challenged legislation in the case at bar. The California ordinance, as applied here, completely prevents the communication, at the place of employment, of the facts of a labor dispute. It is no answer to say that such facts may be communicated in some other place. The same argument was attempted by the municipalities involved in the *Leaflet Cases*. It was urged that the persons interested in expressing their ideas could do so by methods other than the distribution of leaflets or, by the distribution of leaflets in places other than those prohibited by the ordinances. This Court rejected that argument, saying that:

> "The streets are natural and proper places for the dissemination of information and opinion; and one is not to have the exercise of his liberty of expression in appropriate places abridged on the plea that it may be exercised in some other place."

So here the employer's place of business is the appropriate place for the "dissemination of information and opinion" concerning disputes between the employer and its employees. It may be noted, moreover, that in one of the leaflet cases, *Snyder* v. *Milwaukee*, the persons arrested were pickets involved in a labor dispute who were distributing the leaflets in question while standing in front of their employer's place of business.

And in *Hague* v. *C. I. O.*, 307 U. S. 496, this Court upheld (with a modification not here pertinent) a decree which enjoined enforcement of an ordinance prohibiting the carrying of placards on the streets (see decree annexed to opinion in Circuit Court of Appeals, 101 F. 2nd 774; Find-

ing D, at 792; Conclusion 5, at 794, and Judgment B 3, at 795).

The drastic curtailment of freedom by the legislation here involved cannot be justified by any proper public purpose. No longer is it possible to accept the suggestion made by the Alabama Supreme Court when, in *Hardie-Tynes Manufacturing Company* v. *Cruise* (1914), 189 Ala. 66, 66 So. 657, it first, many years ago, sustained the statute under review in the companion case of *Thornhill* v. *Alabama* (No. 514). That Court there said that the legislature had, perhaps, taken the view that "there is and can be no such thing as peaceful picketing or peaceful persuasion." All modern thinking on this subject proves the contrary. Thus the Congress of the United States in both the Clayton Act (38 Stat. 738, 29 U. S. C. A., § 52) and the Norris-LaGuardia Act (47 Stat. 70, 29 U. S. C. A., 101 ff.) has denied to the Federal Courts the right to enjoin peaceful picketing. Like prohibitions are contained in many state laws (see Appendix A).

And, in the absence of statute, many Courts have declared the legality of peaceful picketing.

Truax v. *Bisbee Local No. 380* (1918), 19 Ariz. 379, 171 P. 121;

Ex parte Lyons (1938), 94 Cal. App. 70, 81 P. 2nd 190;

Loew's Enterprises v. *International Alliance* (1939), 125 Conn. 391, 6 A. 2nd 321;

Weissman v. *Jureit* (1938), 132 Fla. 661, 181 So. 898;

Kargas Furniture Co. v. *Amalgamated, etc., Union* (1905), 165 Ind. 421, 75 N. E. 877;

Music Hall Theatre v. *Moving Picture Machine Operators* (1933), 249 Ky. 639, 61 S. W. 2nd 283;

International Pocketbook Worker's Union v. *Orlove* (1929), 158 Md. 496, 148 A. 826;

Minnesota Stove Co. v. *Cavanaugh* (1915), 131 Minn. 458, 155 N. W. 638;

Marx & Haas Jean Clothing Co. v. *Watson* (1902), 168 Mo. 133, 67 S. W. 391;

Bayonne Textile Corp. v. *Am. Fed. of Silk Workers* (1934), 116 N. J. Eq. 146, 172 A. 551;

Stillwell v. *Kaplan* (1932), 259 N. Y. 405, 182 N. E. 63;

LaFrance v. *I. B. E. W.* (1923), 108 Ohio St. 61, 140 N. E. 899;

Wallace v. *International Association* (1936), 155 Ore. 652, 63 P. 2nd 1090;

Everett Waddey Co. v. *Richmond Typographical Union* (1906), 105 Va. 188, 53 S. E. 273;

Kimbel v. *Lumber & Sawmill Workers Union* (1937), 189 Wash. 416, 65 P. 2nd 1066.

The subject of picketing is exhaustively discussed in *Frankfurter & Greene, The Labor Injunction* (1930), and in *Oakes, The Law of Organized Labor and Industrial Conflicts* (1932). Cf. *Brissenden, The Labor Injunction* (1933), 48 Pol. Sci. Q. 413; *Hellerstein, Picketing Legislation and the Courts* (1932), 10 N. C. L. Rev. 158; *Landis, Introduction to Cases on Labor Law* (1934); *Warm, A Study of the Judicial Attitude Towards Trade Unions and Labor Legislation* (1939), 23 Minn. L. Rev. 255. See also *Fraenkel, Recent Statutes Affecting Labor Injunctions and Yellow Dog Contracts* (1936), 30 Ill. Law Rev. 854; id. *Judicial Interpretation of Labor Laws* (1939), 6 Chicago Law Rev. 577.

The Court below made no extended argument in upholding the ordinance. It said only (R. 74) that there was "at least a logical argument that such is a proper exercise of the police power for the preservation of the public peace and safety." But there is no basis for the conclusion that all picketing must be banned in order to preserve peace and safety. On the contrary, it is just as unnecessary and improper to do this as it was to ban all leaflet distribution in order to preserve the cleanliness of the streets. The prohibition is mere legislative fiat.

Moreover, such fiat that all picketing is inherently unlawful is arbitrary and, regardless of any issue of free speech, would be a denial of due process under the rulings of this Court, such as *Fiske* v. *Kansas*, 274 U. S. 380; *Stromberg* v. *California*, 283 U. S. 359, and *DeJonge* v. *Oregon*, 299 U. S. 353. In all these cases state convictions were reversed because the State Court had so construed the applicable statute as to punish an act inherently lawful.

So in the case at bar the State Court has construed the ordinance as banning peaceful picketing, itself an act entirely lawful. The conviction must, therefore, be reversed.

CONCLUSION.

It is respectfully submitted, therefore, that the conviction appealed from must be reversed and the ordinance, as applied here, be declared unconstitutional.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION
as amicus curiae.

OSMOND K. FRAENKEL,
Counsel.

APPENDIX A.

(a) Statutes Similar to the Norris-LaGuardia Act.

Colo.: Stat. (1935), c. 97, § 78, Laws 1933, p. 406.
Conn.: Stat. (1939), c. 309a, § 1423c, Laws 1939, c. 251, § 4.
Idaho: Laws 1933, c. 215, § 3.
Ind.: Stat. (1933), § 40-504, Laws 1933, c. 12, § 4.
La.: Stat. (1938 Supp.), §4379.7, Laws 1934, c. 203, § 3.
Md.: Stat. (1935 Supp.), Art. 100, § 67, Laws 1935, c. 574.
Minn.: Stat. (1938 Supp.), § 4260.4, Laws 1933, c. 416—repealed and restricted by Laws 1939, c. 440.
N. Y.: Civil Practice Act, § 876-a (1), Laws 1935, c. 477.
Ore.: Stat. (1935 Supp.), § 49-1907, Laws 1933, c. 355—restricted by Laws 1939, c. 2.
Pa.: Stat. (1938 Supp.), Title 43, § 206f, Laws 1937, Act 308—restricted by Laws 1939, Act 163.
Utah: Stat. (1939 Supp.), Title 49, c. 2A, § 3, Laws 1933, c. 15.
Wash.: Stat. (1939 Supp.), § 7612.7, Laws, Spec. Sess. 1933, c. 7 (held unconstitutional in 1936—Blanchard v. Golden Age Brewing Co., 188 Wash. 396, 63 P. 2nd 397).
Wisc.: Stat. (1937), § 103.53, Laws 1931, c. 376—restricted by Laws 1939, c. 25.

(b) Other Statutes Indicating That Peaceful Picketing is Legal.

Ariz.: Code (1928), § 4286, Rev. Stat. 1913, § 1464.
Ill.: Stat. (1939), c. 48, § 2a, Laws 1925, p. 378.
Kan.: Stat. (1935), § 60-1107, Laws 1913, c. 233, § 4.
Mass.: Stat. (1939 Supp.), c. 149, § 24, Acts 1933, c. 272.
Mich.: Stat. (1938). 28.242, Laws 1935, No. 168.
N. H.: Laws 1935, c. 46.
N. J.: Stat. (1939), Title 2, c. 29, § 77, Laws 1926, c. 207.
N. M.: Laws 1939, c. 195, § 1.
N. D.: Laws 1935, c. 247, § 7.
Wyo.: Laws 1937, c. 15.

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No. 667

IN THE

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OCTOBER TERM, A. D. 1939

JOHN CARLSON,
Appellant,

vs.

PEOPLE OF THE STATE OF CALIFORNIA,
Appellee.

BRIEF FOR ROSS W. SWING AS AMICUS CURIAE.

MYER N. ROSENGARD,
SAMUEL A. RINELLA,
Counsel.

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ARGUMENT.

I. In dealing with employer and employee relationships (and except as limited by the interstate commerce grant of power to the Federal Govment) States should have a wide field of discretion in the exercise of police power. These relationships are purely state problems; the constitutional guarantee of freedom of speech is not absolute and has its limitations. The States should have the right to regulate the method and means of publicity as well as the use of public streets 9

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Appellee.

BRIEF FOR ROSS W. SWING AS AMICUS CURIAE.

This case and the case of *Thornhill* v. *State*, No. 514, both of which are now before this Court, involve similar basic principles. A decision by this Court in these cases will have an immediate bearing and effect upon similar legislation in other States, and in addition thereto, the possible result in thousands of civil cases now pending in the courts of several States. Ross W. Swing is one of the plaintiffs in a cause now pending in the courts of review in the State of Illinois. The subject matter of his suit and the questions involved have been before this Court in Case No. 615, entitled *American Federation of Labor, et al.* v. *Ross W. Swing, et al.*, in which certiorari was denied by this Court for want of final order on February 5, 1940. Since the entry of this order a final decree has been entered in the courts of Illinois.

STATEMENT OF THE CASE.

We are compelled to take the liberty of restating the facts because a complete statement of the facts does not appear in any of the briefs filed by the parties.

Appellant (who will hereafter be referred to as defendant) was charged by criminal complaint with violating an ordinance entitled as an "Anti-Picketing Ordinance." The complaint charged him with picketing in violation of the ordinance (Rec. p. 1). The transcript of record shows that all of the parties to the action, as well as the State courts, treated this ordinance as being an ordinance which prohibited picketing. The defendant was found guilty and directed to pay a fine imposed (Rec. p. 67).

The Justice of the Peace before whom the case was tried (Rec. p. 67) did not render any opinion. Neither did the court of review (Rec. p. 73). The court of review (Rec. p. 74) said that in the absence of any decision or opinion of the higher courts of review in the State, it would not take it upon itself to construe the ordinance as to its purpose, effect and constitutionality.

The briefs filed on behalf of the parties and the brief filed by the American Civil Liberties Union as *amicus curiae* fail to call to the attention of this Court all of the provisions of the ordinance in question; nor do they in their briefs discuss or allude to all of the contemporary conditions in the community at the time of the passing of the ordinance or at the time of the alleged violation thereof. The ordinance was passed on April 4, 1938. It is reasonably inferred from the record that Shasta County, in the State of California, prior to April 4, 1938, was mainly an agricultural community. Shortly prior to that date the federal government had undertaken a water project known

as the Central Valley Water Project for the purpose of making the Sacramento River navigable up to the City of Redding (the county-seat of Shasta County). In so doing, it became necessary to relocate the tracks of the Southern Pacific Railroad in Shasta County and to build tunnels. A contract for the construction work was let by the United States Bureau of Reclamation (Rec. pp. 23, 35) to the United Concrete Pipe Corporation. Preliminary work was commenced on January 26, 1939, when the contractor hired some twenty-nine men (the defendant included) to clear away brush so that a spur track could be placed on the premises (Rec. p. 30). The defendant came to work on that day and worked until February 2, 1939, when the job was shut down because of weather conditions, and all of the men, including the defendant, were laid off (Rec. p. 30). A few days prior to February 2nd an organizer for the American Federation of Labor local union came on the premises and sought to obtain membership applications from the defendant and his co-workers. On the day they were laid off and discharged, the defendant and twenty-eight others got together in a group and took a vote as to whether they would become members of the American Federation of Labor local union or the Committee on Industrial Organization local union. The record is silent on the question as to when the C. I. O. local union tried to organize the men; but it can be reasonably inferred from the record by the fact that the men took a vote on February 2nd as to which union they would join, that an attempt was made prior to February 2nd to bring the men into the C. I. O. local union. The defendant himself apparently held a card in the C. I. O. union but was on the delinquent list on February 2nd (Rec. p. 32). It is clear from a reading of the record that the defendant and all others were discharged on February 2nd or "laid off,"

as he put it, not due to any union affiliation but solely because of weather conditions. It also appears that the defendant and all of his co-workers were not hired under a definite contract but on an "at will" basis. During the weeks succeeding February 2nd, the organizers for the C. I. O. union as well as the A. F. of L. union sought recognition as the bargaining agency for the employees; apparently a controversy arose as to which of the trade unions (A. F. of L. or C. I. O.) was going to act as the bargaining agency for the employees. At that time the job was closed down and nobody was working. One week later work again commenced but was immediately shut down because the two labor unions had taken their complaints to the Governor of the State (Rec. p. 33) for arbitration. After several weeks of attempts at arbitration by the officials of the State government, the job reopened and new employees were hired; these men were members of the A. F. of L. local union, and the defendants immediately thereafter started to picket. The picket line consisted of twenty-nine men who walked in pairs (Rec. p. 25) five or six feet apart for a distance of fifty to one hundred feet north to south and back again and on the gravel portion of the highway adjacent to the place where work was going on. Some ten or fifteen of these pickets (Rec. p. 25) carried banners upon which the following legends appeared: "Dont be a Scab"; "Shasta County Construction Workers Local 260"; "C. I. O. picket line"; "This job is unfair to C. I. O." (Rec. pp. 68B-68E).

In the ordinance involved herein the legislative body of the County included a lengthy statement of the reasons which impelled its adoption. The complete ordinance is found in the record (Rec. p. 68A). It is stated by the Board of Supervisors that they were compelled to pass the ordinance because of disputes and differences which had re-

cently arisen in the County by reason of the reclamation work and the influx of skilled labor and the trade unions back of labor; that the employers, the employees, organized labor and different groups and factions of employees were at war; that these disputes and differences had created and increased a spirit of violent animosity between individuals and groups; that this warlike atmosphere had resulted and continues to and threatens the peace of the County because coercion, picketing and all manner of violence have taken place. The Board of Supervisors then proceed in the ordinance to give the facts leading to their conclusion which they say are as follows: That in the opinion of the board of directors the majority of the employees in the County do not wish to belong to trade unions because the employees themselves cannot dictate the policies of the local union, but they are compelled to abide by the rules and regulations already established and to the dictates of the unions leaders; that they may be compelled to go on strike even though it may be against their individual interests, with the result that they will be thrown out of work and may become public charges; that the trade unions are compelling them to join the union not by peaceful methods but by force, coercion, violence and fear; that their individual wishes are not being regarded, and that their destiny as workers are being interfered with by the trade unions; that one of the means used by the trade unions to accomplish the purpose of compelling the employees to join the trade unions is by picketing the places of business in the County; that such picketing has and will foment resistance to union activities generally, with the result that there has been and will continue to be open violence, riots and mob action, which has and will endanger the lives, health, property, comfort and peace of the community.

It is apparent from an examination of the ordinance (and what we deem to be a reasonable inference from the record), that what happened in this County was that the reclamation project had the tendency to convert this agricultural community into a semi-industrial county; that since the work started skilled labor came into the community seeking work on the project, and became temporary residents of the County during the time that the reclamation work was going on; and that in back of the employees came the organizers for the two trade unions, to-wit: American Federation of Labor and Committee on Industrial Organization; that these organizers immediately became active and sought membership in their respective trade unions and trade union activities took hold; that the trade unions were competing between themselves for membership; and calling and maintaining strikes in this competitive campaign. The record does not contradict the factual statements appearing in the ordinance. As a matter of fact the immediatee controversy leading to the picketing was not one involving wages, hours of labor or working conditions of the employees or collective bargaining in principle. It was simply a controversy between the two national unions and the employer as to whose members he would employ; it clearly appearing that the employer was willing to recognize the trade union as the bargaining agency.

Summary of Argument.

I.

In dealing with employer and employee relationships and except as limited by the interstate commerce grant of power to the federal government) States should have a wide field of discretion in the exercise of police power. These relationships are purely State problems; the constitutional guarantee of freedom of speech is not absolute and has its limitations. The States should have the right to regulate the method and means of publicity as well as the use of the public streets.

Truax v. *Corrigan*, 257 U. S. 312.

Gitlow v. *New York*, 268 U. S. 652.

Near v. *Minnesota*, 283 U. S. 697.

West Coast Hotel Co. v. *Parrish*, 300 U. S. 379.

Labor Board v. *Jones & Laughlin Steel Co.*, 301 U. S. 1.

Senn v. *Tile Layer's Union*, 301 U. S. 468.

Lovell v. *Griffin*, 303 U. S. 444.

Schneider v. *State*, 308 U. S.—84 L. Ed. 115.

Thornhill v. *Alabama*, Case No. 514, October Term, 1939. Supreme Court of the United States.

Swing v. *A. F. of L.*, 372 Ill. 91.

Hardie Tynes Mfg. Co. v. *Cruise, et al.*, 66 So. 657.

McKay v. *Retail Automobile Salesman's Union*, 89 Pac. 2nd, 426.

Davis v. *Massachusetts*, 167 Mass. 43.

Anti Picketing Ordinance of Shasta County, California.

II.

The end sought to be attained by the trade union was unlawful under the substantive law of the State of California. The means were made unlawful by the ordinance.

McKay v. *Retail Automobile Salesman's Union*, 89 Pac. 2nd, 426.

III.

The effect of the upholding of the right asserted by the trade union would be to declare what should be the substantive law of twenty-two States which do not have legislation dealing with labor conflicts; and in some instances, the effect would be to declare a substantive law contrary to the common law of the State.

Hardie Tynes Mfg. Co. v. *Cruise, et al.*, 66 So. 657.

ARGUMENT.

I.

In dealing with employer and employee relationships (and except as limited by the interstate commerce grant of power to the federal government) States should have a wide field of discretion in the exercise of police power. These relationships are purely State problems; the constitutional guarantee of freedom of speech is not absolute and has its limitations. The States should have the right to regulate the method and means of publicity as well as the use of the public streets.

This case and the case of *Thornhill* v. *State of Alabama*, No. 514, were argued orally and submitted to this Court at the same time. The legal issues in the two cases are the same.

A determination of the issues involved will affect all intrastate business in the United States in connection with both the statutory and substantive law in many of the States. The importance of a decision and opinion in this case is emphasized by the following:

(a) According to an article written by Professor Paul Douglas in the "Iron Age," in the issue of April 6, 1939, there are approximately 1,300,000 persons engaged in intrastate business in the United States who employ nine or less people;

(b) There are approximately 10,000,000 people employed in the forty-eight States in purely intrastate endeavors who can be members of trade unions under the present by-laws and rules of the unions. This figure is

arrived at in the following manner: Taking the census of business prepared by the Bureau of Labor in 1930 and estimating the increased number of persons employed, less the present estimated unemployment, it appears that there are approximately 36,000,000 people actually employed in the United States at the present time. These include employers doing their own work, agricultural employees, professionals and domestic servants. In the first annual report of the Administrator of the Wage and Hour Law for the calendar year 1939, it appears that there are 12,500,000 people employed who are engaged in interstate commerce and subject to the act. There are approximately 14,000,000 people engaged in agricultural, domestic and professional work in all of the States. These persons cannot become members of the national trade unions. Therefore, the resultant figure of 10,000,000 represents the people engaged in intrastate business and subject to trade union membership. Of these 10,000,000 people, 4,800,000 consist of clerical help who are employed in trades and businesses which are in the main retail businesses engaged solely in intrastate business; a part of these 10,000,000 are members of either national or local trade unions.

(c) There are 22 States which do not have legislation dealing and treating with labor conflicts. The subject is dealt with under the common law of the State. Of these States, Alabama and a few others have declared as a matter of substantive law that peaceful picketing under any and all circumstances is unlawful, regardless of whether or not the purpose of a strike is lawful or unlawful;

(d) 12 of the States have legislative enactments similar to the Federal Norris-LaGuardia Act; 14 States have acts

similar to Section 20 of the Clayton Act. In 1939 Wisconsin repealed its little Norris-LaGuardia Act and went back to the Clayton Act; Oregon after trying the Norris-LaGuardia Act for five years has enacted a modified Clayton Act, which act was passed as a result of a referendum of the people. In Oregon, the people by referendum directed the repeal of the Norris-LaGuardia Act. Therefore, in addition to the 22 States which have no legislation, in 14 of the States no strike is lawful in its purpose unless there is an immediate relationship of employer and employee present at the time of the strike. In other words, trade unions as such and in which none of the employees of a plant are members, have no right to picket, and picketing would undoubtedly be declared unlawful if maintained by the trade unions themselves, as in Illinois and California. (*Swing* v. *American Federation of Labor*, 372 Ill. 91; *McKay* v. *Retail Automobile Salesmen's Union*, 89 Pac. 2nd, 426.)

If this Court renders a decision and opinion which will sustain the asserted right claimed by the trade unions in these cases, such opinion will vitally and materially affect the employer and employee relationships in practically all of the common law States, as well as in the States which have prototypes of Section 20 of the Clayton Act; in all approximately thirty-six States.

The issues as made by the record and briefs filed in this Court are as follows:

THE TRADE UNIONS' POSITION.

The trade unions ask this Court to declare as a national policy that picketing *per se* under all conditions, facts and circumstances, is guaranteed as a liberty under the due

process clause of the Fourteenth Amendment; and they (by logical inference from their arguments) say that this liberty is guaranteed to them and their members regardless of whether a particular strike is called for a lawful or unlawful purpose, and irrespective of the fact that none of the employees of a particular plant are members of the trade union and where the strike is called solely for organization purposes and to compel both the employees and employer to recognize a particular trade union as the bargaining agency. They seek to have imposed on both the common law and Clayton Act States a definition of labor dispute, such as is found in the Norris-LaGuardia Act of the Federal Congress by a decision and opinion in these two cases. They ask this Court to override the common law of the State of Alabama in furtherance of which the act of the legislature attacked in *Thornhill* v. *State of Alabama* was passed; (*Hatdie-Tynes Mfg. Co.* v. *Cruise, et al.*, 66 So. 657); it appears from a reading of the opinion in this case that under the common law of the State of Alabama peaceful picketing *per se* is unlawful, and the statute was passed making it a misdemeanor to picket peacefully. They contend that this right which they ask for is the liberty of freedom of speech because the picket line is used to disseminate information; and they say that this Court is committed to a recognition of this right by reason of the language appearing in the opinion of this Court in *Senn* v. *Tile Layers Union*, 301 U. S. 468, wherein at page 478, it is said:

> ". . . Members of a union might, without special statutory authorization by a State, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution."

They ask this Court to make this pronouncement clearer and more positive and to declare with certainty and without equivocation that this right is a "liberty" of freedom of

speech. They therefore argue that the legislation in the case at bar and in the *Thornhill* case is unconstitutional on the face of the legislation and is violative of these freedom of speech rights and guarantees.

THE POSITION OF THE STATES OF CALIFORNIA AND ALABAMA.

The State of Alabama joins issue and says; that the legislation in question was passed in recognition of the common law of the State which makes peaceful picketing unlawful as a means to attain either the lawful or unlawful purpose of a strike. Both the States of California and Alabama further say that power to deal and treat with labor problems are essentially local problems and matters over which the States themselves have complete control; that except where the Federal Congress has passed legislation dealing and treating with the problem in connection with the interstate commerce clause of the Federal Constitution, this Court has repeatedly said that the problems are local problems; and they say that this Court is further committed to the doctrine that the States should have a wide latitude in their exercise of sovereign police power and to determine for themselves what is necessary to protect and preserve the health, safety, morals and welfare of their people. The States further assert that under the decision and opinion in the case of *Senn* v. *Tile Layers Union, supra,* this Court recognizes that the freedom of speech guarantee of the Fourteenth Amendment and in labor cases is not limitless but limited; and they say that this right of limitation by regulation is recognized by the following statement appearing in the opinion and immediately following the statement hereinabove quoted, and which bespeaks of freedom of speech:

> "The State may in the exercise of its police power regulate the method and means of publicity, as well as the use of the public streets."

Both States further say that their legislation does not in any way attempt to put a previous restraint or license upon the right to speak freely; that the legislation merely regulates the method and means of publicity and the use of the public streets in a private controversy between two parties wherein both are attempting to further their private interests, and wherein the public is usually harmed by reason of the private conflict between the parties. They say that this legislation is merely a regulation dealing with freedom of speech not generally but at a particular place; to-wit: the place where the conflict takes place; that under the legislation, the trade union and the employer has each and every right of freedom of speech granted by the Constitution to espouse their cause everywhere else in the community and without any limitation or even regulation. The States further say that this regulation is reasonable, taking into consideration experience in connection with labor conflicts; that the ordinance involved in the instant case clearly shows what the contemporary, economic and social conditions are in the County in question. The States further say that they have the power to determine the needs of the people of their State, and that the wisdom of legislation is not the subject matter of review by this Court; and they finally say that the State has the right to protect the propery and civil rights of the employer, as well as the property rights and civil rights of the employees; and may without being charged with being unreasonable or arbitrary, pass legislation which recognizes the rights of both parties where they both come into play in a given case and as they invariably do in every case involving a strike and picketing. They say that the right of the employer to have the use of the public streets for free access of his employees and those who trade with him, uninterrupted by a picket line, is a right which should be recognized. They concede also that the right of the employees to disseminate information as to

their cause is also a right which must be recognized; but they say that breaches of the peace, violence, intimidations and threats and from a long experience leads them to the conclusion takes place at the point of conflict, to-wit: the place of business and where the labor union always maintains its picket lines; that such breaches of the peace affect the well being, safety and health of all of its citizens; that after all, both parties seek to use the public streets not for the ordinary public purpose of travel but for the purpose of airing out their private difficulties, and that the title to the streets is not held by the State for the purpose of permitting the airing out of private contest, but solely for public use of travel. By this legislation they say that no attempt is made to deprive anyone of the right to speak freely; and they further say that laws must be passed to protect alike all persons living in the State regardless of their financial of social position or condition; and that the State is not required to pass legislation which will permit the exercise of the right at a given place because that place is the place which one group of citizens finds to be the best place to most effectively further their own private ends. Both States further say that experience has taught (as we shall hereafter demonstrate) that it is not unreasonable or arbitrary in labor cases to treat with the question of breach of the peace on the basis of passing legislation to prevent breach of the peace at a given place, to-wit: the place of contact, rather than treat and deal with breach of the peace after it occurs; that experience over a period of years has demonstrated that in labor conflicts treating with breach of the peace after it has occurred, by arrest of the violators, does not act as a deterrent; that in practice the public is continually and continuously subjected to being interfered with in the use of the public highways, and that arrests and punishments of the trade union pickets does

not have the effect of deterring or stopping the continuing of breach of the peace and violating of police regulation or legislation.

Taking these issues as made, we now address ourselves to the interpretative decisions of this and other Courts treating with the legal principles involved.

THE GENERAL PRINCIPLES.

These general principles are (first); to what extent can the States limit the freedom of speech liberty as protected by the Fourteenth Amendment; (second) are the limitations or regulations found in the ordinance in the case at bar a reasonable or arbitrary exercise of police power; and (third) what has this Court declared to be the limitation of police power of the States under the due process clause of the Fourteenth Amendment.

We submit that this Court is definitely committed to the doctrine that the cardinal principle invoked in construing legislative enactments is to save and not to destroy; that as between two possible interpretations of a statute, by one of which it would be unconstitutional and by the other valid, it is the plain duty of this Court to adopt that which will save the Act. (*Labor Board* v. *Jones & Laughlin*, 301 U. S. 1, 30.)

The due process clause does not interfere with the inherent sovereign right of a state to treat with labor problems. The problem of involving conflicts between employers on one side and trade unions on the other, is essentially a State problem; it does not became a Federal problem unless and until the Congress of the United States has passed legislation under the granted powers in interstate commerce clause of the Federal Constitution (*Senn* v. *Tile Layers Union*, 301 U. S. 468, 481; *West Coast Hotel Co.* v.

Parrish, 300 U. S. 379; dissenting opinions in *Truax* v. *Corrigan*, 257 U. S. 342, 376).

We therefore submit that each State has the right for itself to determine and declare what is a lawful or unlawful purpose of a strike; and what are lawful or unlawful means which may be used in accomplishing the end sought to be attained by a strike; that it must be conceded that the State of Alabama has the constitutional right, to declare as a matter of substantive law, that peaceful picketing is *per se* unlawful, regardless of whether the purpose of the strike is lawful or unlawful; that the Fourteenth Amendment does not in any way diminish or take away this right from the States (*Senn* v. *Tile Layers Union*, 301 U. S. 468; dissenting opinions in *Truax* v. *Corrigan*, 275 U. S., 342, 376; *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379).

When this Court is called upon to pass upon the constitutionality of legislation and in cases wherein it is charged that the legislation on its face is a denial of due process, and particularly in the cases involving labor relations, this Court has recognized the foregoing fundamental precepts and has examined the legislation solely for the purpose of determining whether the legislation reasonably or arbitrarily takes away the basic rights of property or liberty as protected by the Fourteenth Amendment. It will be recalled that this Court is committed to the doctrine that the State may, almost without limitation, cut down the property right. This we say is a reasonable deduction from the opinion of this Court in *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, wherein this Court refused to strike down the minimum wage law for women of the State of Washington, and overruled a previous decision of this Court which declared that such laws unconstitutionally impair the property right, by arbitrarily

limiting the free right to contract by both employer and employee.

Up until the case of *Gitlow* v. *New York*, 268 U. S. 652, decided in 1925, this Court refused to recognize that the Fourteenth Amendment imposed any restraint upon the States with reference to the right of freedom of speech. In *Gitlow* v. *New York* and in all of the cases brought to this Court since that time and with the possible exception of the case of *Lovell* v. *Griffin*, 303 U. S. 444 and the *Leaflet* cases, particularly the Milwaukee ordinance case found in *Schneider* v. *State*, 84 Law Ed. p. 115, involved legislation which defied the historical basic precept and purpose of the First Amendment to the Constitution of the United States. In all of these cases the legislation attempted to create a previous restraint on publishing or speaking freely. In the case of *Near* v. *Minnesota*, 283 U. S. 697, this Court construed the act as having the effect of creating a previous restraint. In *Lovell* v. *Griffin* and in the *Leaflet* cases, *supra*, this Court approached the problem from a broad basis and staunchly and zealously guarded the freedom from restraint so that it may not be later contended that this Court is committed to the doctrine that previous restraints might exist, as to the free discussion of purely governmental and political subjects. Even then, this Court recognized that there may be limitations; that the right is not absolute. One of the limitations recognized by this Court is where force is advocated or espoused; and it has been said by this Court that where there is a clear or present danger of violence or force in the use of the words, that legislation passed to guard against such use of force may even provide for previous restraints. In the labor cases, we submit that where either the end sought to be attained by a trade union or the means used consist of the advocacy or reasonably tend to have an immediate

danger of the use of force, that legislation protecting against such possibility is valid and not unconstitutional.

We shall hereafter demonstrate that the legislation here and the facts of the case as applied indicate that the use of force was one of the cardinal purposes that the legislation sought to guard against; and that the facts reveal a clear and present danger of force.

At no time has this Court been called upon to pass upon the right of freedom of speech where he who sought protection of the Fourteenth Amendment by asserting this right, was seeking this protection in the furtherance of his own private ambitions. The labor unions here, and it must be conceded that in all picketing cases where picketing is used as a means to promote an ultimate end, the ultimate end is one where the trade unions seek to accomplish a purpose which is wholly private with it and its members; it seeks to gain a position which will further its own personal and private ends as against the employer. In the case at bar the labor union does not assert the right to speak freely because it wishes to exercise what is purely a public right, but solely to compel the employer to sign a contract with it under which the employer will recognize the trade union as the bargaining agency of the employees. Can it rightfully be said that the freedom of speech guarantee as found in the First Amendment and as absorbed into the Fourteenth Amendment by the decisions of this Court was ever and is now intended to protect private parties in their personal ambitions. Certainly from a historical standpoint, the First Amendment was never intended to protect such an asserted right. Can it be said that a legislature is denied the right under the freedom of speech guarantees of the Fourteenth Amendment to regulate the use of the public streets for the purpose of one's private desires and ambitions, when it is and

always has been recognized that title to the public streets is held by the sovereign State for the purpose of permitting free and uninterrupted public travel? We respectfully submit that such an interpretation of the freedom of speech guarantees was never intended by the framers of the First Amendment and by those who have fought for this right throughout the one hundred fifty years of our existence. If this be a right, then no State, as was said by this Court in *Davis* v. *Massachusetts*, 167 Mass. 43, could end the right of the public to enter upon a public street by putting an end to the dedication for public uses, which right has always been recognized as a basic right of the State.

The trade unions in the case at bar seek comfort in the fact that in the so-called Milwaukee ordinance case (*Schneider* v. *State*, 84 Law Ed. p. 115) the defendant was distributing circulars advising the public of the unlawful practices of an employer. From this they draw the conclusion that this Court is committed to the doctrine that there can be no regulation of a right to the use of the public highways for what they say is the dissemination of information. We respectfully submit that the approach made by this Court to the questions involved in the *Milwaukee* case were not based on the basis of a picket line or of a labor dispute, but that this Court treated the question on the broad basis of previous license or restrain of freedom of speech. This Court apparently was of the opinion that if there were two ways of treating with an offense, that that way which would not in any way restrict or limit freedom of speech should be used; and accordingly said that punishing the offender rather than the one who distributes was the way that the City of Milwaukee should have handled the situation, rather than by general ordinance covering all public streets denying the free right of the dissemination of information.

We shall hereafter discuss this question, but at this time we submit to the Court that in the picket cases, punishing a breach of the peace after it has taken place is not the reasonable, fair or practical way of serving the public interest; experience has taught that the best and practical way, and perhaps the only way of serving the public interest, is by preventing the happening of a breach of the peace rather than punishing the breach after it has happened. However, we reiterate that private ambitions and solely private desires cannot and should not be made the basis of striking down legislation which seeks only to regulate the right to speak freely at *one given place and not generally* in the community. In the Milwaukee ordinance case, the denial of the right was on all of the public streets and highways; it was not a denial of the right to distribute handbills in a particular place—in front of the place of business of the employer; it was perhaps too general and this Court therefore refused to sustain the validity of the ordinance.

Most singularly the issues of this case were perhaps anticipated by one of the judges who wrote a dissenting opinion in the case of *Truax* v. *Corrigan*, 257 U. S. 312, 348. The learned judge in his opinion and in dealing with the problems involved in the case at bar, in principle, said as follows:

> "* * * And just as the States have a broad discretion about establishing police regulations, so they have a discretion, equally broad, about modifying and relaxing them. They may adopt the common law, or some other system, as their own judgment of the interests of their people may determine. They have general dominion, and, saving as restricted by particular provisions of the Federal Constitution, complete dominion over all persons, property, and business transac-

tions within their borders; and in regulating its internal affairs a State may establish by legislation a policy differing in one or more respects from those of other States, just as it might establish a like difference through the decisions of its courts.

"Hence, I have no doubt that, without infringing the 'due process' clause, a State might by statute establish protection against picketing or boycotting however conducted, just as many States have done by holding them to be contrary to the common law, recognizing a property value in a going business, and applying equitable principles in safeguarding it from irreparable injury through interference found unwarranted * * * And, just as one State might establish such protection by statute, so another State may by statute disestablish the protection, even as States have differed in their judicial determination of the general law upon the subject. In neither case can I find ground for declaring that the State's action is so arbitrary and devoid of reasonable basis that it can be called a deprivation of liberty or property without due process of law, in the constitutional sense. In truth, the States have a considerable degree of latitude in determining, each for itself, their respective conditions of law and order, and what kind of civilization they shall have as a result."

Of late years this Court in attempting to set up the tests of reasonableness or arbitrariness of legislation, has apparently adopted the language and reasoning found in one of the dissenting opinions in *Truax* v. *Corrigan*, 257 U. S. at page 354; and it appears to us that one of the cardinal tests which this Court has committed itself to follow is to make an examination of the economic, social and political conditions in the community so as to arrive at an under-

standing as to the reasons, motives and purposes of the legislation; that it is recognized by this Court that the cold words of legislation cannot and should not be of themselves the true test. And accordingly, it must be recognized that if the economic, social and political situation in a community is to be a standard or test, the law must be ever changing; and it must be further recognized that the rules governing the contest change from time to time because conditions themselves change; that therefore there are and should be but few laws which can have universal application. Experience always enters into the picture: Putting the legislation and the facts in this case to the test of experience and the economic, social and political situation in the county at the time the ordinance was passed and at the time of the arrest of the defendant, we respectfully submit that the ordinance of itself bespeaks of a condition of unrest in the community, brought about by a changed social and economic life in the county. A farming community is suddenly turned into a semi-industrial community; from a family of farmers the community becomes partly a family of industrial workers and partly farmers; laborers suddenly come into the community and seek work; with the laborers there comes in union organizers who are sent in for the purpose of unionizing both the labor and the employer; of obtaining union members and compelling the employer to recognize the union. On top of all of this, the two national unions are competing with each other, and, as is evidenced by this record, fighting for membership and recognition; each one espousing his own cause and attempting to keep the other from gaining a foothold. The result is, as this ordinance says, that strife takes place; the attack is made from all fronts, and in the attack there is violence, intimidation and threats. The situation does not present a picture where employees as a class seek the benefit of the trade union for their collective bargaining purposes; the

trade union seeks the employee; it seeks by one method or another to compel him to become a member of the trade union; the trade union seeks to compel the employee so as to force the employer; and when one trade union finally gains a foothold and perhaps a contract, then the other trade union runs a picket line against both the employer and the trade union; and as in the case at bar the employee who is working and who is a member of a trade union is charged with being a "scab" and in a picket line they carry banners containing the legend "Don't be a scab." To the public, the word "scab" has a definite and accepted meaning, to-wit: that those employed are strike breakers, and that he who employs is unfair to union labor, and as such he is employing strike breakers. It is no wonder that the legislative body of the community seeks to protect the community and the persons who have undoubtedly lived in the community for many years from the possibility of being the innocent subjects of breaches of the peace, violence, etc., and to keep what has been the peace in the community.

The ordinance in the case at bar bespeaks of previous happenings of breaches of the peace, violence and intimidation, and of the reasonable expectation and fear of subsequent happenings of what might be called a part of a "local war." The ordinance in question does not in any way attempt to limit the right of freedom of speech. Consistent with what the legislative body thought was a wise way to handle the situation, it merely regulated the right at the place where common experience has taught is usually the place where the conflict takes place, and usually the place, if there is going to be a breach of the peace, where such breach of the peace will occur. The ordinance does not deny the right of the trade union or its members to espouse its cause anywhere else in the community, and

even on the principal public square of the county seat, which is two miles away; it does not prevent the passing out of circulars anywhere in the county, even at the place of employment. As far as a reading of the ordinance itself is concerned, the defendant and his colleagues could go three or four blocks from the place of business and there stop everyone who might be employed, or who might seek employment, or who might be on his way to trade with the employer; it might even conduct and enforce a secondary boycott. The trade union members could even go to the homes of the employees and employers and there urge their cause; and insofar as the ordinance is concerned, can there even commit a breach of the peace by threats, intimidation, etc.

The record in this case is clear. If the legislation is valid on its face or as applied to the defendant and the facts in the case, it did not deny him due process at law, he was properly found guilty. It was admitted that the purpose of the picket line was to induce the present employees to quit their jobs and keep prospective employees from seeking employment. The ordinance made picketing for such purpose a misdemeanor. Therefore, if the legislation is valid, the conviction order was proper.

The trade unions say that the right of freedom of speech is the right to speak freely whenever and wherever they deem it for their best interest so to do; that experience has taught them that the most effective place to espouse the cause of a strike is at the place of employment and by means of a picket line; and that therefore they are entitled to be protected in that way which they think is the most effective way of gaining their ends; and they apparently urge and argue that if the States wish to legislate on the subject and in connection with punishing for breaches of the peace, legislation should take the form of punishing

after the breach has occurred. In other words, they say: "punish him who breaks the peace, but you can't pass legislation which punishes before the breach actually takes place."

The lesson of experience teaches otherwise; we cannot shut our eyes to what is going on in this country in connection with labor disputes and the present form that the contests are taking. This case is typical—two national unions fighting with each other. If the employer contracts with one of the unions, the other pickets and charges him and his employees with being "scabs"; if he contracts with the other, the first one pickets his plant. To say that he is not injured is not to speak the truth. Common experience teaches that every picket line causes an injury to the employer; to say that the picket line is maintained merely for the purpose of disseminating information is but a half truth; the picket line is placed for the purpose of disseminating information, but it is also there even if peaceful, for the purpose of a silent threat to both the customers and the employees of a plant; and primarily for the purpose of injuring the business of the employer. We submit that this is the ultimate purpose; to injure the employee so as to bring him to his knees and deal with the union is its main purpose. The running of the gauntlet of a picket line is not a pleasant task for either the employee or persons who seek to trade with the employer, be it ever so peaceful; especially a picket line consisting of twenty-nine people.

An examination of court records and of the thousands of contempt cases appearing in the annals and records of our police courts and of our reported decisions, demonstrate that the zealousness of the cause of a strike has not in the past deterred those who picket, by arresting them after they commit breaches of the peace. We respectfully

submit that experience in this country teaches us that when there are breaches of the peace in the picket lines, arrest, punishment and fines have not in any degree stopped the breach of the peace—to the contrary, the community and the public seeking travel on the public highway is always subjected to the breach of the peace, and arrests, fines and punishment have not acted as a deterrent.

We therefore respectfully submit that by the ordinance in question, the legislative body took that path which was a reasonable path to take; that the best interests of the public were served by seeking to regulate the picket line by preventing the possibility of a breach of the peace at the place where the breach, as experience has taught, will most likely, ordinarily and usually take place.

The trade union also takes the following position: That a denial of the right to carry banners and disseminate information by a picket line at the place of business is in effect a denial and limitation of the right itself in labor cases, because they say that the trade unions are never in good financial condition; that they do not have the financial ability or means to disseminate information in any other way; and that therefore they should be given the right to maintain their picket lines, if for no other reason; and that if there is any injury or damage to the employee, it is but an unfortunate circumstance brought about by economic conditions. We deny that this is a correct statement of fact in 1940. Before demonstrating that what we say is true, we respectfully suggest that this argument presupposes an injury to the employer. If the trade unions seek to espouse their cause and injure the employer, they at least should be asked to take the consequences of this injury by being responsible in damages to the employer for such injury. No legislature could pass a constitutional law under which a man could be seriously injured with-

out at least providing for some means of redress for the injury. The trade unions have accordingly always said that extraordinary process of injunction should not be permitted and that the employer should be relegated to his ordinary remedies. Let us put this argument to the test of common experience: The national trade unions have not and cannot be put, by reason of their organization set-up, to the responsibility for damages caused to an employer. Strikes and the contest are always conducted by local trade unions; this local trade union is always a loose, voluntary organization having no duty to the State government to make reports showing its financial condition; having no duty to publish financial figures, income, disbursements or otherwise; its financial position or condition is always in the hands of its officials; it usually owns no physical property and its affairs are and remain solely in their "vest pocket," (if we may be permitted to use a frank paraphrase). How can such an organization be compelled to respond in damages? The past has taught us that it is almost impossible to collect judgments against trade unions—much less discover who are their members. Being voluntary organizations, they must be treated as joint associates, and all of the members must be made parties to any proceedings against them. The mere statement of the necessity for so doing bespeaks of the difficulty which always arises in an attempt to bring ordinary civil common law actions against them for damages. If the labor unions want the right to injure and to take their chances thereby, they must be willing to accept responsibility and should put themselves in a position where they will respond in damages for injuries sustained or likely to be sustained by virtue of their private activities. This is not what they offer; they ask for the right without offering to accept responsibility for the abuse thereof.

This must be recognized in dealing and treating with the problems presented in the case at bar.

For many years the trade unions have taken advantage of the basic precept of democratic government: "that the weak must be protected against the strong." Therefore, we have heard for the past fifty years that the employees, individually and collectively in their trade unions, are financially weak compared to the financial strength of the employer, individually and collectively. Our legislators and our courts have recognized and have given force and effect to this argument, with the result that the trade union movement has been given life and strength by our legislators and our courts. Are they, in 1940, the weak and undernourished child in the family, needing special attention, or are they strong enough to take care of themselves?

In answer to the question, we submit the following figures showing the potential and financial strength of the five large national trade unions in this country:

By the end of 1938, the American Federation of Labor claimed a total membership of approximately 3,600,000 in its affiliated unions; the C. I. O. claimed a membership of approximately 4,000,000.[1] It is common knowledge that the three large unaffiliated unions (Railroad Brotherhoods, International Garment Workers, and Printing Unions) had a total membership of 1,500,000, making a total membership of approximately 9,100,000 in the five large unions. At the end of 1937, the American Federation of Labor

[1] "Report of Executive Council A. F. of L., 58th Annual Convention," (Oct. 3, 1938) Houston, Texas; "Report of John L. Lewis to First Constitutional Convention of C. I. O." (November 14, 1938) p. 11—covering a period from the Organization of the C. I. O. to November 1, 1938.

claimed a membership of approximately 3,200,000; the C. I. O., 3,800,000, and the three large unaffiliated unions, it is estimated, had approximately 1,500,000 members. Thus, the American Federation of Labor in one year's time increased its membership by 400,000; the C. I. O. by 200,000, making a total increase of 600,000 in membership in one year. There were 40,000,000 persons gainfully employed in the United States at the end of 1937;[2] of these there were approximately 10,000,000 employed in agriculture and an additional 8,000,000 were employed in professional work and as domestic servants, making a total of 18,000,000 gainfully employed who were not eligible to trade union membership.[3] *Therefore, the five large unions represented 23% of all persons gainfully employed in the U. S. and approximately 41% of all of the gainfully employed persons in the United States who were eligible to trade union mem-*

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[2] "Report of Executive Council A. F. of L. to the 57th Annual Convention," Denver, Colo. (Oct. 4, 1937) p. 10; Elsie Gluck, "Introduction to American Trade Unionism," 1937 Supp. Additional figures—C. R. Daugherty—"Labor Problems in American Industry," 1933, p. 499.

Year	A. F. of L. Membership	Union Membership
1897	264,825	447,000
1904	1,676,200	2,072,700
1906	1,454,200	1,958,700
1910	1,562,112	2,184,200
1913	1,996,004	2,753,400
1917	2,371,434	3,104,600
1920	4,078,740	5,110,800
1923	2,926,468	3,780,000
1928	2,896,063	3,449,100
1931	2,889,500	3,298,000
1934 Estimated	4,000,000	5,000,000

[3] Woytinsky—"Labor in the United States," 1938, chart. p. 308-311—It will be noted that this chart is based upon

bership. Over a period of three years and from 1934 to 1937, trade union membership increased by 4,000,000. From 1931 to 1937 trade union membership in these large unions increased by approximately 6,000,000.[4] In 1931, trade unions represented approximately 9% of the totally gainfully employed persons eligible to trade union membership, employed in the United States, so that over a period of six years and while industry was going through a depression and suffering tremendous loss of capital, trade union membership increased by 32%.

From a standpoint of gross income; if each member of a trade union pays $10.00 per year as membership dues, the total income of trade unions in United States would be approximately $90,000,000. However, it is common knowledge that trade union dues and initiation fees are far in excess of $10.00 per year. It is not unusual practice for trade unions to have initiation fees which run into

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the official "Report of the United States Census Bureau for the 1930 Census."

The figures quoted above are an estimate giving due regard to the fact that unemployment has increased since 1930. It will be noted that the chart cited shows that the total number of persons gainfully employed in the United States in 1930 was 48,829,920 whereas our figure for 1937 was 40,000,000. The latter figure is taken from an estimate made by Herbert Harris in his book, "American Labor," 1939 p. 359.

It is a matter of common knowledge that the number of persons employed in agriculture, professional work, domestic and service pursuits was greater in 1930 than in 1937. Therefore our percentage figures that follow represent an extremely conservative conclusion. Since these figures are estimates we attempt to be as conservative as possible.

[4] Harris, "American Labor," 1939 p. 359; Gluck, "Introduction to American Trade Unionism," 1937 Supp. p.

hundreds of dollars per member.[46] Such an income is far in excess of the gross receipts of even some of our large industrial institutions. The American Federation of Labor had an income of approximately $1,185,000 between August 31, 1936, and August 31, 1937. At the end of this fiscal period they had $586,500 in cash on hand, of which $533,000 was set aside as a defense fund to be used for union organization and defense purposes. During the fiscal year, the American Federation of Labor collected close to $750,000 from a general and special per capita tax and from initiation fees; the special tax was collected for special defense fund purposes. The income of the American Federation of Labor for the succeeding fiscal year ending August 31, 1938, was approximately $1,800,000, or an increase of $700,-

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96. In October 1937, total trade union membership was 7,750,000—Gluck op. cit. p. 96. Additional figures show:

Year	Total Persons Employed	Membership in Trade Unions	Percentage of Trade Union Members to Total Persons Employed
1897	26,000,000	447,000	1.4
1910	38,000,000	2,147,200	5.8
1920	42,000,000	5,110,800	12
1930	48,000,000	3,298,000	9
1934	40,000,000	5,000,000	12.5
1939 Estimated	40,000,000	9,500,000	23

Harris, "American Labor," 1939, chart p. 359—

It will be noted that the figures used to indicate the number of persons gainfully employed include those persons engaged in agriculture, professions, domestic and service pursuits. If those persons not eligible to membership in trade unions were omitted from our calculations, it must be recognized that the percentage figures shown would be 41% for 1939.

[46] Prof. Paul H. Douglas, "International Labor Review," March 1939.

000 in cash income over the preceding fiscal year. During the fiscal year 1937 to 1938, the American Federation of Labor spent approximately $1,175,000 for organization purposes, which was an increase of approximately $650,000 in expenditures for the same item over the previous year.[5] Office expenses in the fiscal year 1936 to 1937 were $166,800; there was approximately $34,600,000 paid out by the American Federation of Labor and the national and international affiliated unions for death, sick, unemployment, old age and disability benefits during the year 1936.[6] C. I. O. reported that from 1935 to 1938, its organization collected approximately $3,500,000 from members of affiliated organizations. The same amount was spent in its activities during these years. Of this amount, there was approximately $1,600,000 spent for organization purposes.[7] At the end of 1936, the Brotherhood of Locomotive Firemen and Engineers had approximately $25,000,000 in cash and securities on hand.[8] These figures do not include the financial picture of the individual unions affiliated with the national groups which as we have heretofore demonstrated have a gross income considerably in excess of $100,000,000 per year. Therefore, we respectfully submit that based on the foregoing figures it must be conceded that trade unions in the United States not only represent a very large percentage of the working

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[5] "Report of the Executive Council of A. F. of L." Denver, Colo, (October 4, 1937) pp. 5-9; "Report of the Executive Council of A. F. of L." Houston, Texas, (Oct. 3, 1938).

[6] Report of Executive Council of A. F. of L. Convention, pp. 6 and 24 (Oct. 3, 1938) Houston, Tex.

[7] "Report of John L. Lewis to the First Constitutional Convention of C. I. O.," Pittsburgh, Pa. (Nov. 14, 1938) pp. 13, 14.

[8] Pamphlet prepared for the members of the Brotherhood of Locomotive Firemen & Engineers, 1937.

public, but their financial position is such that they can enter the conflict at least on an equal basis with any individual or any group or association of employers.

We respectfully submit, therefore, that the legislation attacked in the case at bar is neither contrary to the due process clause of the Fourteenth Amendment on its face nor has the defendant himself been denied due process under the liberties granted to him by the Fourteenth Amendment.

II.

The end sought to be attained by the trade union was unlawful under the substantive law of the State of California. The means were made unlawful by the ordinance.

We do not wish to further burden this brief with any lengthy discussion of the question as to whether the end sought to be attained by the trade union or the means used were unlawful under the laws of the State of California.

The apparent purpose of the strike was not a purpose which is ordinarily the purpose of the contest. The employees and their trade union representatives were not striking for better wages or shorter working hours, nor were they striking to compel the employer to recognize a trade union as the bargaining agency. The employees here, as testified by the defendant himself, were discharged several weeks before the plant reopened with new help. As he put it, they were "laid off" (Rec. P. 30). They were not discharged because of their affiliation with the trade union or with a particular trade union. The defendant himself testified that he was discharged because weather conditions would not permit operations; the purpose of the strike was to compel recognition of a trade union in which none of the present employees were mem-

bers. Under the decision and opinion of the Appellate Court of California in the case of *McKay* v. *Retail Automobile Salesmen's Union*, 89 Pac. 2nd, 426, such a purpose is not the lawful purpose of a strike. Neither were the means used lawful means. It will be recalled that one of the banners carried (Rec. p. 68B) bore the legend, "Don't be a scab." The words "Don't be a scab" appearing as a legend on a banner carried are in no different category than if orally addressed to an employee; such address has always been declared by our courts to have the effect of intimidation and threat in fact.

We therefore submit that under the facts as they appear in this record, the defendant is asking for the right to speak freely in furtherance of and for the purpose of accomplishing an unlawful purpose; that means used are also unlawful *per se;* and that this course of conduct is force. This Court has said, even in the previous restraint cases, that the legislature has the power to pass legislation which will prevent the use of words or the doing of any act which has the present and clear danger of force. Therefore we submit that even assuming the legislation to be a previous restraint, the ordinance properly limited force.

III.

The effect of the upholding of the right asserted by the trade union would be to declare what should be the substantive law of twenty-two states which do not have legislation dealing with labor conflicts; and in some instances, the effect would be to declare a substantive law contrary to the common law of the State.

We submit that the effect of sustaining the right contended for by the defendant would be a declaration of national

policy, to the effect that all peaceful picket lines may
maintained everywhere in the United States and in
and every State thereof under the freedom of speech gu
antees of the Fourteenth Amendment. 'If the right is s
tained, the effect of such a decision and opinion would
to force onto the States a Norris-LaGuardia Act by judic
legislation; it would have the effect of compelling
twenty-two States, which now treat with labor problems
the basis of substantive law, to recognize the lawfulness
a picket line. The State of Alabama would be compelled
change its common law which now says that peaceful pick
ing is *per se* unlawful. This we say would be an unco
stitutional interference with the sovereign powers of t
States. We respectfully submit that the States have t
right to insist that their power and right to deal with t
problem of labor and labor conflicts is essentially a Sta
power and should not be interfered with by any branch
the Federal Government.

CONCLUSION.

We conclude this brief by quoting from the concurring opinion of this Court in the case of *Graves* v. *New York, ex rel O'Keefe*, 306 U. S. 466-491:

> "The judicial history of this doctrine of immunity (immunity of state employees from federal taxation) is a striking illustration of an occasional tendency to encrust unwarranted interpretations upon the Constitution and thereafter to consider merely what has been judicially said about the Constitution, rather than to be primarily controlled by a fair conception of the Constitution. Judicial exegesis is unavoidable with reference to an organic act like our Constitution, drawn in many particulars with purposed vagueness so as to leave room for the unfolding future. But the ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it. * * *"

Respectfully submitted,

MYER N. ROSENGARD,
SAMUEL A. RINELLA,
Counsel for Ross W. Swing as Amicus Curiae.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1939

No. 667

JOHN CARLSON,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

APPEAL FROM THE SUPERIOR COURT OF THE STATE OF CALIFORNIA IN AND FOR THE COUNTY OF SHASTA.

PETITION FOR REHEARING

LAURENCE W. CARR,
District Attorney of Shasta County,
Counsel for Appellee.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1939

No. 667

JOHN CARLSON,

Appellant,

vs.

THE PEOPLE OF THE STATE OF CALIFORNIA

Appellee.

PETITION FOR REHEARING

Now comes appellee in the above entitled cause, and respectfully prays that said cause be reheard and reconsidered, for the following reasons:

1. THAT THE COURT HAS REVERSED ITSELF

The court has slurred over the contention that the ordinance is an exercise of the *absolute dominion* of the state over public places, *Davis v. Massachusetts*, 167 U. S. 43; 42 L. Ed. 71.

Said the Court in the instant case:

"Our decision in Thornhill v. Alabama, No. 514, decided this day (—— U. S. ——, ante, 659, 60 S. Ct. ——) goes far toward settling the issues presented here."

84 L. Ed. Adv. Opinions 670.

"It (the ordinance in question) *cannot be thought to differ in any material respect* from the statute held void in Thornhill's Case." (Italics supplied.)

84 L. Ed. Adv. Opinions 671.

The statute in the Thornhill case was not limited in its application to public places. The 'public place' distinction in this ordinance was strongly urged before this Court in argument, and at page 8 of the Brief for Appellee.

2. THE COURT HAS HELD IN EFFECT, THAT PICKETING AT A LABOR CONTROVERSY HAS NOT SUFFICIENTLY DISTINCT CHARACTERISTICS TO BE SINGLED OUT FOR REGULATION, WITHOUT DENYING EQUAL PROTECTION OF THE LAWS TO THOSE AFFECTED.

Said the Court, at page 670:

"The ordinance does not proscribe the carrying of signs in other places or for the purpose of inducing or attempting to induce others to adopt courses of action not related to labor disputes."

Unless this Court overrules the case of *Davis v. Massachusetts*, supra, the only objection open to the ordinance is that the use of public places regulated thereby, is arbitrarily selected. Certainly picketing at a labor controversy is a legislative object of sufficiently distinct characteristics to be reasonably classified by itself for regulation.

Appellee prays for the reasons herein set forth, that the judgment of the Court be vacated, and the cause reheard and reconsidered.

Respectfully submitted,

LAURENCE W. CARR,
District Attorney of Shasta County
Counsel for Appellee

I hereby certify that the foregoing petition is, in my oinion, well founded in law, and is presented in good faith and not for delay.

LAURENCE W. CARR,
District Attorney of Shasta County
Counsel for Appellee

SUPREME COURT OF THE UNITED STATES.

No. 66.—October Term, 1939.

John Carlson, Appellant,
vs.
The People of the State of California.

Appeal from the Superior Court of the State of California.

[April 22, 1940.]

Mr. Justice Murphy delivered the opinion of the Court.

This case presents the question whether regulations embodied in a municipal ordinance abridge the freedom of speech or of the press secured against state invasion by the Fourteenth Amendment.[1]

Section 2 of an ordinance of Shasta County, California, provides:

"It shall be unlawful for any person, in or upon any public street, highway, sidewalk, alley or other public place in the County of Shasta, State of California, to loiter in front of, or in the vicinity of, or to picket in front of, or in the vicinity of, or to carry, show or display any banner, transparency, badge or sign in front of, or in the vicinity of, any works, or factory, or any place of business or employment, for the purpose of inducing or influencing, or attempting to induce or influence, any person to refrain from entering any such works, or factory, or place of business, or employment, or for the purpose of inducing or influencing, or attempting to induce or influence, any person to refrain from purchasing or using any goods, wares, merchandise, or other articles, manufactured, made or kept for sale therein, or for the purpose of inducing or influencing, or attempting to induce or influence, any person to refrain from doing or performing any service or labor in any works, factory, place of business or employment, or for the purpose of intimidating, threatening or coercing, or attempting to intimidate, threaten or coerce any person who is performing, seeking or obtaining service or labor in any such works, factory, place of business or employment."[2]

[1] "It is well settled that municipal ordinances adopted under state authority constitute state action and are within the prohibition of the amendment." Lovell *v.* Griffin, 303 U. S. 444, 450; Schneider *v.* State, 308 U. S. 147.

[2] Section 1 declares that it shall be unlawful for any person "to make any loud or unusual noise, or to speak in a loud or unusual tone, or to cry out or proclaim, for the purposes of inducing or influencing, or attempting to induce or influence, any person" to refrain from entering, or purchasing merchandise from, or performing any service in, any place of business. The State did not charge that this section was violated.

Appellant was one of a group of twenty-nine men engaged in "picketing" on U. S. Highway 99 in front of the Delta Tunnel Project in Shasta County. "The picketing consisted of walking [on the edge of the highway nearest the project] a distance of 50 to 100 feet in a general northerly direction, then turning around and retracing steps and continuing as before . . . all of the walking in connection with the picketing . . . was done off the paved portion of the highway and on the gravelled portion of the right-of-way, that is, on public property." Some of the pickets carried signs, similar to those described in the margin,[3] in such a manner that workers on the project and persons going along the highway in either direction could read them. The sign carried by appellant bore the legend: "This job is unfair to CIO." These activities occurred between the hours of 7:30 and 9:00 a. m. During this period vehicles and persons passed freely without any molestation or interference through the picket line from the highway to the project and from the project to the highway, and the traffic of persons and automobiles along the highway was not obstructed. Appellant did not threaten or intimidate or coerce anyone, did not make any loud noises at any time, and was peaceful and orderly in his demeanor. The pickets committed no acts of violence, and there was no breach of the peace.

The County officers arrested appellant and charged that he did "loiter, picket, and display signs and banners in a public place and in and upon a public highway in front of, and in the vicinity of, the Delta Tunnel Project . . . for the purpose of inducing and influencing persons to refrain from doing and performing services and labor" at the project in violation of the ordinance. The Justice's Court of Township Number Nine found him "guilty of violating the Shasta County Anti-Picketing Law", rendered judgment accordingly, and imposed sentence. The Superior Court of Shasta County affirmed the judgment. That court upheld the ordinance.

[3] Four signs were admitted in evidence as typical. They were of white card board, approximately 14 x 22 inches in size, and were tacked upon a stick some 34 inches long, 1½ inches wide and ¼ inch thick. Black painted letters, ranging in size from 1½ inches to 5 inches in heighth, spelled out one of the following legends on each sign: "Don't be a scab", "Shasta Tunnel and Construction Workers Local #260", "CIO Picket Line", "This job unfair to CIO".

over appellant's claim of unconstitutionality, on the authority of a prior decision.[4] The case comes here on appeal.[5]

Our decision in *Thornhill* v. *Alabama*, No. 514, decided this day, goes far toward settling the issues presented here. Under that decision, Section 2 of the ordinance in question is to be judged upon its face.[6]

Section 2 on its face declares it unlawful for any person to carry or display any sign or banner or badge in the vicinity of any place of business for the purpose of inducing or attempting to induce any person to refrain from purchasing merchandise or performing services or labor. It likewise makes it unlawful for any person to loiter or picket in the vicinity of any place of business for a similar purpose. The terms "loiter" and "picket" are not defined either in the ordinance or in authoritative State decisions. Therefore, they must be judged as covering all the activities embraced by the prohibition against the carrying of signs in the vicinity of a labor dispute for the purpose mentioned.[7] The ordinance does not proscribe the carrying of signs in other places or for the purpose of inducing or attempting to induce others to adopt courses of action not related to labor disputes. It contains no exceptions with respect to the truthfulness and restraint of the information conveyed or the number of persons engaged in the activity. It is true that the ordinance requires proof of a purpose to persuade others not to buy merchandise or perform services. Such a purpose could be found in the case of nearly every person engaged in publicizing the facts of a labor dispute; every employee or member of a union who engaged in such activity in the vicinity of a place of business could be found desirous of accomplishing such objectives; disinterested persons (who might be hired to carry signs) appear to be a possible, but unlikely, exception.[8] In brief, the ordinance does not regulate

[4] Appellant, prior to trial, moved to dismiss the complaint upon a number of grounds, among which was the contention that Section 2 of the ordinance violated the Fourteenth Amendment in abridging his "freedom of speech, freedom of press, and freedom of assembly." The same objections were raised by demurrer, by further motions to dismiss the complaint, and by motion in arrest of judgment.

[5] There is no further appeal allowed in the State courts.

[6] We do not decide whether, in view of the separability provision (§ 3), the State courts might cull out from Section 2 particular clauses which, standing alone, could be sustained.

[7] See Thornhill *v.* Alabama, No. 514, p. —, n. 18.

[8] Even they would be covered under a construction making purpose synonymous with intent. See Thornhill *v.* Alabama, No. 514, p. —, n. 17.

all carrying of signs, but, on the contrary, proscribes the carrying of signs only if by persons directly interested who approach the vicinity of a labor dispute to convey information about the dispute.

The sweeping and inexact terms of the ordinance disclose the threat to freedom of speech inherent in its existence. It cannot be thought to differ in any material respect from the statute held void in *Thornhill's* case. The carrying of signs and banners, no less than the raising of a flag, is a natural and appropriate means of conveying information on matters of public concern. *Stromberg* v. *California*, 283 U. S. 359. For the reasons set forth in our opinion in *Thornhill* v. *Alabama*, *supra*, publicizing the facts of a labor dispute in a peaceful way through appropriate means, whether by pamphlet, by word or mouth or by banner, must now be regarded as within that liberty of communication which is secured to every person by the Fourteenth Amendment against abridgment by a state.

The power and duty of the State to take adequate steps to preserve the peace and protect the privacy, the lives, and the property of its residents cannot be doubted. But the ordinance in question here abridges liberty of discussion under circumstances presenting no clear and present danger of substantive evils within the allowable area of State control.

Reversed.

Mr. Justice McREYNOLDS is of opinion that the judgment below should be affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.